1870 no 6

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~257.~~ 68

CHARLES CLARK AND THE BUCKEYE MUTUAL INSURANCE COMPANY, APPELLANTS,

vs.

THE STEAMER ADMIRAL FARRAGUT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

**FILED SEPTEMBER 27, 1869.**

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the decree of a plea which is in the said circuit court before you, between Charles Clark and the Buckeye Mutual Insurance Company, appellants, and the steamer Admiral Farragut, respondent, a manifest error hath happened, to the great damage of the said Charles Clark and the Buckeye Mutual Insurance Company, as by their complaint appears; we, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may leave the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record
2 and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the fourth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-third.

[L. S.] J. A. JONES,
*Clerk of the Circuit Court of the United States for the Southern District of Illinois.*

*The answer of the justices of the circuit court of the United States for the southern district of Illinois to the foregoing writ.*

The record and process, whereof mention is therein made, follow in these words, to wit:

3 Pleas in the circuit court of the United States of America for the southern district of Illinois, at a term begun and held at the city of Springfield, in said district—Honorable David Davis, one of the justices of the Supreme Court of the United States of America, presiding; Honorable Samuel H. Treat, district judge of said district, associate—on Monday, the fourth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-third.

JOHN A. JONES, *Clerk.*

CHARLES CLARK AND THE BUCKEYE MUTUAL Insurance Company, appellants,
*vs.*
THE STEAMER ADMIRAL FARRAGUT, Respondents. } In admiralty.

Appeal from district court.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the thirteenth day of

June, in the year of our Lord one thousand eight hundred and
4 sixty-eight, came Charles Clark and the Buckeye Mutual Insurance Company, appellants, abovenamed, by L. Proudfoot, esq., their proctor, and filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois a transcript of the process, proceedings, and record in a certain cause tried and determined in the district court of the United States for said district, wherein the said Charles Clark and the Buckeye Mutual Insurance Company were libellants, and the steamer Admiral Farragut, the above-named respondent, was defendant; which said transcript of appeal from said district court to said circuit court is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

Pleas in the district court of the United States for the southern district of Illinois, held at the city of Springfield, in said district, before the Honorable Samuel H. Treat, district judge of said district, on Monday, the fourth day of May, in the May special term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

5 CHARLES CLARK AND THE BUCKEYE Mutual Insurance Company v. THE STEAMER ADMIRAL FARRAGUT. } In admiralty.

Be it remembered that heretofore, to wit, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-six, came Charles Clark, libellant, by J. Proudfoot, his proctor, and filed in the office of the clerk of the district court of the United States for the southern district of Illinois, his libel against the steamer "Admiral Farragut," her engines, boilers, boats, tackle, apparel, and other furniture, defendant, in a cause of collision, civil and maritime; which said libel is in words and figures following, to wit:

To the Honorable Samuel H. Treat, judge of the district court of the United States for the southern district of Illinois:

The libel of Charles Clark, of the town of Lockport, State of Illinois, against the steamer "Admiral Farragut," her engines, boilers, boats, tackle, apparel, and other furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and
6 maritime, allege as follows:

First. That your libellant, before and at the time of the collision hereinafter mentioned, was the owner and master of a certain canal-boat called the "Ajax," with her boats, tackle, apparel, and furniture, which said canal-boat is a boat of more than twenty tons burden; and before and at the time of the collision hereinafter mentioned was enrolled and licensed for the coasting trade, and was engaged in the business of commerce on the Illinois and Mississippi Rivers, at different points and places on such rivers, between the ports of La Salle, in the State of Illinois, and the port of St. Louis, in the State of Missouri; that before and at the time of said collision, the said steamer "Admiral Farragut," which is a vessel of more than twenty tons burthen, was enrolled and licensed for the coasting trade, and was engaged in the business of commerce and navigation at different points and places on the Illinois and Mississippi Rivers, between Beardstown, in the State of Illinois, and St. Louis, in the State of Missouri.

Second. That on Wednesday, the 7th day of March, A. D. 1866, the said canal-boat "Ajax" was lying at the port of Beardstown, on
7 the Illinois River, with a load of wheat, corn, and oats, the said canal-boat being then, and also at the time of the collision hereinafter mentioned, tight, staunch, strong, and seaworthy in every respect; that the said owner and master of said canal-boat entered into a contract with the master or owner of the steamer "Admiral Farragut" to tow the said canal-boat, with the cargo, safely from said port of Beardstown to the port of St. Louis, in the State of Missouri, and return, for the sum of one hundred and thirty dollars.

Third. That in pursuance of said contract the owner or master of said steamer "Admiral Farragut" caused the said canal-boat "Ajax" to be lashed securely to the side of said steamer and proceeded on her aforesaid journey down the Illinois River for the port of St. Louis.

Fourth. That said steamer, with said canal-boat so lashed as aforesaid, proceeded safely on said journey, until about 4 o'clock in the morning of March 8th, when in attempting to pass through the bridge at Meredosia landing, known as the Meredosia railroad bridge, the said steamer was so carelessly and negligently managed that she
8 caused the said canal-boat to come in contact with the pier or abutment of said bridge, and caused such damage to said canal-boat that she and her cargo immediately sunk and became a total loss.

Fifth. That said collision and loss was occasioned by no negligence or incapacity or want of skill on the part of the owner, or those in charge of said canal-boat, but occurred wholly from the negligence, recklessness, and incapacity of those having the said steamer Admiral Farragut in charge; and had they observed the ordinary caution and diligence necessary in the navigation of said river at said point, said accident and loss would not have occurred.

Sixth. That said canal-boat Ajax was fully worth the sum of three thousand dollars.

Seventh. That the libellant, with his wife, who was also on board of said canal-boat at the time of said collision, had a narrow escape for their lives, and were compelled to abandon all of their clothing, wardrobe, &c.; which said articles of clothing, &c., were fully worth the sum of five hundred dollars.

9 Eighth. That the freight-list for the transportation of said cargo of grain would have netted to the libellant, at St. Louis, over and above all cost of transportation, the sum of two hundred and fifty dollars, making a total of three thousand seven hundred and fifty dollars loss, by reason of said collision, to said libellant, which said sum the libellant has repeatedly requested the owners and master of said steamer Admiral Farragut to pay to him; but the said owners and master of the said steamer deny that there is any liability on the part of said steamer for the damages aforesaid.

Ninth. That the said steamer "Admiral Farragut" is now lying at the port of , within the jurisdiction of this court.

Tenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Whereupon the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and
10 maritime jurisdiction, may issue against the said steamer Admiral Farragut, her engines, boilers, boats, tackle, apparel, and furniture; and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honor-

able court would be pleased to decree the payment of the damages as aforesaid; and that the said steamer may be condemned and sold to pay the same; and that the libellant may have such other and further relief as in law and justice he is entitled to receive.

CHARLES CLARK.

Subscribed and sworn to before me this 20th day of April, A. D. 1866.

[SEAL.] L. PROUDFOOT,
*U. S. Com. for the Northern Dist. of Illinois.*

Filed April 26th, 1866.
(Signed) GEO. P. BOWEN, *Clerk.*

Whereupon a writ of attachment and monition was issued against the said steamer Admiral Farragut, her engines, boilers, boats, tackle, apparel, and furniture, directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the second day of July in the year last aforesaid, returned by said marshal duly executed; which said writ, together with the return of the marshal thereto, is in the words and figures following, to wit:

11

[50-c. rev. stamp.]

UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel has been filed in the district court of the United States in and for the southern district of Illinois, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and sixty-six, by Charles Clark against the steamer "Admiral Farragut," her engines, boilers, boats, tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having, or pretending to have, any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of three thousand seven hundred and fifty dollars, the damages alleged in said libel, besides costs of suit:

12

You are therefore commanded to attach the said steamer Admiral Farragut, her engines, boilers, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give notice, by publication in the Illinois State Register for fourteen days previous to the day of trial, and by notice posted up in the most public manner for the space of fourteen days at or near the place of trial of such seizure and libel, to all persons claiming the said steamer Admiral Farragut, her engines, boilers, boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel, and that they be and appear before the said court, to be held in and for the southern district of Illinois, at the United States court-room in the city of Springfield in said district, on the first Monday in June next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the fore-

noon of that day, then and there to interpose a claim of the
13 same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Honorable Samuel H. Treat, judge of said court, this 26th day of April, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninetieth year.

[L. S.] GEO. P. BOWEN, *Clerk.*

By virtue of this writ I have this day attached the within described steamer Admiral Farragut, and made due proclamation of the same.

May , 1866.

D. L. PHILLIPS, *U. S. Marshal,*
By ——— ———, *Special Deputy.*

*Copy of notice & certificate.*

UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

Whereas, on the 26th day of April, A. D. 1866, Charles Clark filed a libel in the district court of the United States for the southern district of Illinois against the steamer "Admiral Farragut," her engines, boilers, boats, tackle, apparel, and furniture, for reasons and causes in
14 said libel mentioned; and whereas, by virtue of process in due form of law to me directed, returnable on the first Monday in June, I have seized upon and taken the said steamer, &c.:

Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the first Monday in July, for the trial of the said premises, and the owner or owners, and all persons who have or claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not be rendered in accordance with the prayer of said libel.

D. L. PHILLIPS, *U. S. Marshal.*

STATE OF ILLINOIS, *Sangamon County:*

CITY OF SPRINGFIELD, *July 2nd*, 1866.

We, the undersigned, publishers of the Illinois State Register, a public newspaper printed in the city, county, and State aforesaid, do hereby certify that a notice, of which the annexed is a true copy, has
15 been regularly published in said paper fourteen days in succession, commencing on the 9th day of June, 1866, and ending on the 24th day of June, 1866.

Given under our hands and seals, at the city of Springfield, this 2nd day of July, 1866.

E. L. MERRITT AND BRO., *Publishers,*
Per C. O. C.

Filed this 2nd day of July, A. D. 1866.
(Signed) GEO. P. BOWEN, *Clerk.*

And on the fourth day of June, in the year last aforesaid, came Charles S. Ebaugh, John F. Nolte, Samuel Marsh, and Charles Q. Quinlin, claimants of the said steamer Admiral Farragut, her boats, tackle, apparel, and furniture, by H. E. Dummer, esq., their proctor, and filed

in the office of the clerk of said court their claim in said entitled cause; which said claim is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
*Southern District of Illinois:*

District court, June term, A. D. 1866.

The claim of Charles S. Ebaugh, John F. Nolte, Samuel Marsh,
16 and Charles Q. Quinlin in the case of Charles Clark against the steamer Admiral Farragut.

And now come the said Charles S. Ebaugh, John F. Nolte, Samuel Marsh, and Charles Q. Quinlin, and allege that they are the true and bona-fide owners of the said steamer Admiral Farragut, her boats, tackle, apparel, and furniture, and that no other person is the owner thereof.

And the said claimants, admitting that the said Admiral Farragut has been seized, and is now in the custody of the marshal, pray that they may be allowed to intervene, and for time to file their answer; wherefore, &c.

CHARLES S. EBAUGH.
JOHN F. NOLTE.
SAMUEL MARSH.
CHARLES Q. QUINLIN.

The foregoing was sworn to before me this 4th June, A. D. 1866, by Charles S. Ebaugh, one of the claimants.

(Signed) GEO. P. BOWEN,
*U. S. Commissioner.*

Filed June 4th, 1866.

GEO. P. BOWEN, *Clerk.*

17 And on the same day, to wit, on Monday, the fourth day of June, in the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:

CHARLES CLARK
*v.*
THE STEAMER ADMIRAL FARRAGUT. } In admiralty.

Now come Charles S. Ebaugh, John F. Nolte, Samuel Marsh, and Charles Q. Quinlin, by H. E. Dummer, esq., their proctor, and file their stipulation and claim herein, and move the court for leave to bond the said steamer.

It is thereupon ordered by the court that upon the said claimants filing a stipulation in the sum of seven thousand five hundred dollars, conditioned to abide the final decree in this cause and pay such amount as may be awarded against them by this court, or the appellate court, if an appeal intervenes, the said steamer Admiral Farragut, her engines, boilers, boats, tackle, apparel, and furniture, be released from custody and delivered to said claimants; and upon the further motion of
18 said claimants, by their said proctor, leave is granted them by the court to file their answer herein by the first Monday of July next.

And afterwards, to wit, on the twenty-first day of June in the year last aforesaid, came the said claimants, by their said proctor, and filed in the office of the clerk of said court their stipulation for the delivery to them of the said steamer Admiral Farragut, her engines, tackle, &c.; which said stipulation is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

Whereas a libel was filed in the district court of the United States for the district aforesaid on the 26th day of April, A. D. 1866, by Charles Clark against the steamer Admiral Farragut, her engines, tackle, &c., for the reasons in said libel mentioned; and whereas a claim has been filed in said cause by Charles S. Ebaugh, John F. Nolte, Samuel E. Marsh, and Charles H. Quinlin, who have applied to have said steamer Admiral Farragut delivered to them, which is ordered to be done:

19 Now, therefore, the said Charles S. Ebaugh, John F. Nolte, Samuel E. Marsh, and Charles H. Quinlin and George H. Nolte, their security, hereby stipulate and agree, for the benefit of whom it may concern, that they are bound in the sum of seven thousand and five hundred dollars, conditioned that the claimants above named shall abide by the final decree in this cause, and pay such amount as may be awarded against them in case a decree of condemnation shall be entered against the said steamer Admiral Farragut, her engines, tackle, &c., by this court, or the appellate court, if an appeal intervenes.

And the said claimants, and their surety, hereby consent and agree that execution may issue against them for said sum of seven thousand and five hundred dollars in case of the condemnation of the steamer Admiral Farragut, her engines, tackles, &c.

| | |
|---|---|
| (Signed) | GEOR. H. NOLTE. |
| (Signed) | CHA'S S. EBAUGH. |
| (Signed) | S. E. MARSH. |
| (Signed) | JNO. F. NOLTE. |
| (Signed) | CHA'S H. QUINLIN. |

Filed June 21st, 1866.
(Signed) GEO. P. BOWEN, *Clerk.*

20 And on the same day, to wit, on Thursday, the twenty-first day of June, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

CHARLES CLARK
*vs.*
THE STEAMER ADMIRAL FARRAGUT. } In admiralty.

Now come again the said claimants, Charles S. Ebaugh, John F. Nolte, Samuel E. Marsh, and Charles H. Quinlin, by H. E. Dummer, esq., their proctor, and file their stipulation therein in the sum of seven thousand five hundred dollars, with security, which is approved by the court, conditioned to abide the final decree in this cause, and pay such amount as may be awarded against them in case a decree of condemnation shall be entered against said steamer Admiral Farragut, her engines, tackle, &c., or the appellate court, if an appeal intervenes.

It is therefore ordered and decreed by the court that the said steamer

Admiral Farragut, her engines, boilers, boats, tackle, apparel, and furniture, be released from custody and delivered to said claimants.

21 And afterwards, to wit, on the second day of July, in the year last aforesaid, came again the said claimants, by their said proctor, and filed in the office of the clerk of said court their answer in said entitled cause; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

United States district court for the southern district of Illinois.—July term, A. D. 1866.

CHARLES CLARK
*vs.*
STEAMER ADMIRAL FARRAGUT, TACKLE, FURNITURE, &c. } Libel.

And now come Charles S. Ebaugh, John F. Nolte, Samuel E. Marsh, and Charles H. Quinlin, owners of the steamer Admiral Farragut, and for answer to the libel of Charles Clark do allege as follows, to wit:

First. That it is true, as your respondents believe, (having no personal knowledge or certain information in the premises,) that Charles Clark was, on and before the 8th day of March, A. D. 1866, the master
22 and owner of the canal-boat "Ajax," tackle, apparatus, and furniture; that said canal-boat is of more than twenty tons burden, and was at the above date enrolled and licensed for the coasting trade, and was engaged in the business of commerce on the Illinois and Mississippi Rivers at different points between the ports of La Salle, Illinois, and St. Louis, Missouri; and it is true that, before and at the date above mentioned, (the 8th March, 1866,) the steamer Admiral Farragut, which is a stern-wheel steamer of more than twenty tons burden, was enrolled and licensed for the coasting trade, and was engaged in the business of commerce and navigation at different points and places on the Illinois and Mississippi Rivers.

Second. That it is true that, on the 7th day of March, A. D. 1866, the said canal-boat Ajax was lying at the port of Beardstown, on the Illinois River, with a load of wheat, corn, and oats; but it is not true that the said canal-boat was then tight, staunch, strong, and seaworthy in every respect; but the truth and the fact was and is, and the respondents do so allege, that while her external appearance did not indicate her
23 really unsound condition, the side-timbers and clamps of said canal-boat were decayed and unsound, her stern was unsound and rotten, and said canal-boat, from age and decay, was an unseaworthy, unsafe, and almost worthless boat. And it is not true, and your respondents so allege, that the owners and master of said canal-boat entered into a contract with the master and owners of said steamer "Admiral Farragut," to tow the canal-boat Ajax, with her cargo, from the port of Beardstown to the port of St. Louis, in the State of Missouri, and return, for the sum of one hundred and thirty dollars; but the truth and fact was and is, and your respondents so allege, that previous to and the said 7th day of March, A. D. 1866, there was and is a general, well-established, and well-known usage on the Illinois and Mississippi Rivers, that contracts for towing, in the absence of special agreements, are contracts to tow safely, except the usual damages and hazards of river navigation. that on the 7th April, on the application of the libellant, your respond-

ent, Charles Ebaugh, then master of the Admiral Farragut, verbally agreed simply to tow the Ajax to St. Louis for the sum of sixty-
24 five dollars; that said contract and agreement was made with reference and subject to the said usage and custom, excepting, in towage contracts, the usual dangers and hazards of river navigation. And your respondents allege that the contract made on the said 7th March, A. D. 1866, was that the steamer Admiral Farragut should safely tow the canal-boat Ajax and cargo, from the port of Beardstown, Illinois, to the port of St. Louis, Missouri, excepting the usual dangers and hazards of river navigation; and your respondents deny that said steamer and her owners incurred by such undertaking the liabilities of a common carrier.

Third. That it is true that the canal-boat Ajax was undertaking and agreement aforesaid, securely lashed to the larboard side of said steamer, not exclusively under the direction of her master, but under the direction and supervision jointly of the libellant and the master of the Admiral Farragut; and it is true that when attached, the steamer with her tow proceeded down the river to the port of St. Louis.

25 Fourth. That it is true that said steamer Admiral Farragut, with her tow, the Ajax, proceeded safely on her way until about 4 o'clock a. m. on the morning of the 8th of March, A. D. 1866, when, in passing through the railroad drawbridge at Meredosia, the canal-boat struck the piles that extend out into the river for the protection of the east pier of said bridge, and was so damaged that she was sunk, and became a total loss; but it is not true that the steamer was then and there carelessly and negligently managed, nor is it true that the loss of the Ajax is attributable to the unskillfulness, incompetency, negligence, or fault of any of those having charge of the steamer, but is fairly and entirely attributable to the usual dangersof river navigation. And your respondents allege that the matters contained in the third article of said libel are in great part falsely and untruly alleged and pleaded; for the truth and fact was and is, and your respondents do so allege, that the railroad drawbridge at Meredosia is placed at a point where the Illinois River, having run in a southeasterly direction, changes its course
26 and runs in a southwesterly direction; that when the water is high, there is a strong current running southeasterly, and diagonally accross the passage-way left for boats through said bridge, which passage-way is one hundred and fifteen feet in width; that the height of water in the Illinois on the 8th of March, 1866, was at a point where said diagonal current is the strongest; that at any stage of water, the stern of a boat going down the river, because simply of the turn in the river, swings round towards the east pier of said bridge, which is protected by piles extending out into the river, and the difficulty of keeping a boat going down stream from striking the east pier, or the piles that protect it, is increased in proportion as the river rises, and the diagonal current above mentioned is increased in strength. Your respondents further allege that on the morning of the 8th March, 1866, the steamer Admiral Farragut approached the bridge with her tow; Charles S. Ebaugh then master of said steamer, who had been licensed as a pilot for twelve successive years previously, and then having such
27 license, and who is one of the most skillful, experienced, and careful pilots on the Illinois River, took the wheel and was steering the steamer at the time of the accident; that as the steamer neared the bridge she was carefully managed, but by the strength of the diagonal current she was forced towards the piles protecting the east pier, when the canal-boat, being on the larboard side, came into contact with the

piles, and was stove and sunk. And your respondents further allege, in further explanation of said accident, that previously the piles extended out for the protection of the east pier, had yielded, so that with sound boats no serious damage ordinarily resulted from a collision, but during the winter preceding March, A. D. 1866, the piling placed for the protection of the east pier had been stiffened by braces, and square timbers also had been bolted across the piles, so that when the unsound and mostly rotten timbers of the canal-boat Ajax came in contact with the piles thus stiffened and unyielding, they were instantly crushed. Your respondents therefore aver that the loss of the Ajax was not attributable to the incompetency or negligence, or fault of those, or any of those,
28 having charge of the steamer, but was within the exception of the usual dangers of river navigation. And, in confirmation of the truth of the above averments, your respondents do further allege that steamers navigating the Illinois River, and especially such as have a tow, frequently strike the piling when passing down through the Meredosia bridge; so that scarcely a steamer regularly navigating the Illinois River has been able to avoid a collision with said bridge or its piling.

Fifth. That it is true that the sinking of the Ajax was occasioned by no negligence or incapacity or want of skill on the part of the owner or those in charge of the Ajax; but it is not true that said collision occurred through the negligence, recklessness, or incapacity of those having charge of the steamer; nor is it true that the loss of the Ajax is attributable to any want of diligence and caution on the part of those having charge of the Admiral Farragut, or any of them; but said loss is attributable, as your respondents have hereinbefore specifically set forth, to the usual danger of the river navigation.

29 Sixth. That it is not true that said canal-boat Ajax was worth the sum of three thousand dollars; but, on the contrary, she was old and decayed in her timbers, and at the time of her loss was of very little value.

Seventh. That it is true that the libellant and a woman, believed to be his wife, were on board of the Ajax, and, by the sinking, were in imminent danger of being drowned; but, as to the allegation that they then lost a wardrobe worth five hundred dollars, your respondents have no knowledge or information.

Eighth. That your respondents have no knowledge or information as to the allegation that the freight-list for the transportation of the cargo of the Ajax would have netted to the libellant the sum of two hundred and fifty dollars; but it is not true that the libellant has repeatedly or ever requested the owners and master of the Admiral Farragut to pay to him his alleged loss of thirty-seven hundred and fifty dollars, or any other sum. Your respondents have not heretofore had any occasion to deny, but they do now deny, any liability on the part of said
30 steamer for any damages growing out of the loss of the Ajax.

Ninth. That it is true that the steamer Admiral Farragut was, and now is, within the jurisdiction of this court. Your respondents that the premises are true; and now, admitting the seizure of said steamer and her release on stipulation by order of the court, your respondents pray that said libel may be dismissed; that your respondents may be discharged from any liability on said stipulation; and that they be allowed their costs in this behalf expended.

HENRY E. DUMMER,
*For Respondent.*

The undersigned, on oath, state that the foregoing answer, and the matters and things therein contained, are true, so far as depends on their own knowledge; and so far as depends on the information of others they believe them to be true.

(Signed) CHA'S S. EBAUGH.
(Signed) JNO. F. NOLTE.
(Signed) S. E. MARSH.

STATE OF ILLINOIS, *Cass County:*

31 Sworn to and subscribed before the undersigned, a notary public in and for the city of Beardstown, Ill., this 29th day of June, 1866.

[L. S.] (Signed) THO'S S. WILES,
*Notary Public.*

Filed July 2nd, 1866.

GEO. P. BOWEN, *Clerk.*

And afterwards, to wit, on the sixteenth day of July, in the year last aforesaid, came the Buckeye Mutual Insurance Company of Cleveland, Ohio, by Azariah T. Galt, esq., their proctor, and filed in the office of the clerk of said court their petition to be made parties libellant in this cause, and to be declared subrogated to the right and interest of the said Charles Clark, the original libellant herein; which said petition is in the words and figures following, to wit:

To the Hon'ble Samuel H. Treat, judge of the district court of the United States for the southern district of Illinois, in admiralty:

32 The petition of the Buckeye Mutual Insurance Company of Cleveland, Ohio, underwriters of the canal-boat Ajax, respectfully represent as follows:

First. That your petitioners are a corporation resident in the city of Cleveland, Ohio, with an agency in the city of Chicago, Illinois, doing business as marine underwriters and insurers.

Second. That on the twelfth day of August, A. D. 1865, your petitioners insured the said canal-boat Ajax for the sum of fifteen hundred dollars, for the benefit of one Charles Clark, the libellant in this suit, against the perils of navigation; and the said canal-boat, at the time said insurance was effected, was adjudged to be worth the sum of three thousand dollars.

Third. That said canal-boat Ajax, while prosecuting a voyage on the Illinois River, in tow of the steamer Admiral Farragut, was run into the Meredosia bridge, (which crosses the Illinois River,) and thereby became a total loss.

Fourth. That the loss of said canal-boat Ajax having been occasioned by one of the perils insured against, your petitioners became lia-

33 ble to pay to said Charles Clark the amount for which said canal-boat was so insured by them, as for a total loss; and that your petitioners accordingly did, on the 1st day of June, A. D. 1866, pay to the said Charles Clark the full sum of fifteen hundred dollars.

Fifth. That on or about the 25th day of April, A. D. 1866, the said Charles Clark filed his libel in this honorable court, against the said steamer Admiral Farragut, alleging, in said libel, that the said collision and loss was caused wholly by and through the negligence and improper conduct of the persons in charge of the said steamer; and that the damages sustained by said libellant by the loss of said canal-boat Ajax is the sum of thirty-seven hundred and fifty dollars, and praying that the

said court will decree against the said steamer for the amount of damages sustained by him by the loss of said canal-boat in consequence of said collision, and that steamer may be sold to pay the same; all of which matters and things, reference being had to said libel now on file in this honorable court, will more fully appear,

34 Sixth. That by the payment of said sum of fifteen hundred dollars, as aforesaid, to the said Clark, your petitioners have acquired a right to the interest of said Clark, to the extent of fifteen hundred dollars, in any decree which may be rendered in said suit against said steamer for damages for the loss of said canal-boat Ajax.

Wherefore your petitioners pray that they may be made parties libellant in said suit, and may be declared subrogated to the right and interest of said Charles Clark in and to the damages which may be decreed to be paid by said steamer Admiral Farragut, or by the claimants in said suit, for the loss of said canal-boat, as aforesaid, to the extent of the amount of insurance as aforesaid paid by them, to wit, the sum of fifteen hundred dollars; and that these petitioners may have the same benefit of all proceedings heretofore had in said cause to the extent of their said interest therein, as if they had been made parties to the original libel.

Buckeye Mutual Insurance Co.,

By N. J. HOWE, *Agent.*

AZARIAH T. GALT, *Proctor.*

35 UNITED STATES OF AMERICA,
*Northern District of Illinois, ss:*

Nathan J. Howe, being duly sworn, deposes and says that he is the agent at Chicago of the petitioners in the above petition mentioned; that he has read said petition, and that the facts set forth therein are true.

(Signed) N. J. HOWE.

Sworn to and subscribed before me this 6th day of July, A. D. 1866.

[L. S.] (Signed) AZARIAH T. GALT,
*Notary Public.*

It is hereby stipulated by the libellant in this case that the statements herein contained are true, and it is hereby admitted that the said Buckeye Mutual Insurance Company has made the payment, as herein stated, to the libellant Charles Clark.

(Signed) CHARLES CLARK,
P'r L. PROUDFOOT, *Proctor.*

Filed July 16th, 1866.

GEO. P. BOWEN, *Clerk.*

36 And thereupon, on the same day, to wit, on Tuesday, the sixteenth day of July, in the year last aforesaid, the following further were had in said court in said entitled cause, and entered of record, to wit:

CHARLES CLARK
*vs.*
THE STEAMER ADMIRAL FARRAGUT. } In admiralty.

Now come the Buckeye Mutual Insurance Company of Cleveland, Ohio, by Azariah T. Galt, esq., their proctor, and present their petition

for subrogation filed herein. And the court having heard the same, and being sufficiently advised in the premises, it is ordered that the prayer of said petitioner be granted, and that the said Buckeye Mutual Insurance Company be made parties libellant in this cause, and be subrogated to the right and interest of the said Charles Clark, the original libellant herein.

And afterwards, to wit, on Tuesday, the fourth day of February, in the January term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

37 CHARLES CLARK AND THE BUCKEYE MUTUAL Insurance Co. *v.* THE STEAMER ADMIRAL FARRAGUT. } In admiralty.

Now come the libellants, by L. Proudfoot, esq., their proctor; and now come also the claimants and respondents, Charles S. Ebaugh, John F. Nolte, Samuel Marsh, and Charles H. Quinlin, by H. E. Dummer, esq., and Messrs. Stuart, Edwards, and Brown, their proctors; and thereupon this cause came on to be heard upon the libel, the claim, and answer of the said claimants and respondents, the testimony taken and filed herein, with the exhibits annexed thereto, and the oral testimony of Charles S. Ebaugh taken in open court; and the court, having heard the same, and not being sufficiently advised in the premises, takes time to consider.

And afterwards, to wit, on Monday, the fourth day of May, in the May special term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

38 CHARLES CLARK AND THE BUCKEYE MUTUAL Insurance Co. *vs.* THE STEAMER ADMIRAL FARRAGUT. } In admiralty.

This cause having been heard upon the libel, the claim, and answer of the claimants and respondents, and the testimony taken herein, and the court, having considered, and being now sufficiently advised in the premises, is of opinion that the said steamer Admiral Farragut was not in fault, as alleged in said libel.

It is therefore ordered, adjudged, and decreed by the court that the said libel be dismissed; and that the respondents have and recover of the said libellants their costs by them in this behalf expended; and that they have execution against the said libellants and George M. Brinkerhoff, their stipulator, therefor.

And now come the said libellants, by L. Proudfoot, esq., their proctor, and pray an appeal to the circuit court of the United States for the southern district of Illinois.

It is thereupon ordered by the court that an appeal be allowed the said libellants upon their entering into bond in the penalty of five
39 hundred dollars, with sufficient surety, conditioned to prosecute their appeal with effect, and pay all such costs as shall be awarded against them if they shall fail to make good their plea.

And afterwards, to wit, on the eleventh day of May, in the year last aforesaid, came again the said libellants Charles Clark and the Buckeye Mutual Insurance Company, by L. Proudfoot, esq., their proctor, and filed in the office of the clerk of said court their appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Know all men by these presents that we, Charles Clark, the Buckeye Mutual Insurance Company, and George M. Brinkerhoff, are firmly held and bound unto the steamer Admiral Farragut & her owners in the sum of five hundred dollars, to be paid to the said steamer Admiral Farragut or her owners, their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, dated this 6th day of May, A. D. 1868.

40 Whereas the above-bounden Charles Clark and the Buckeye Mutual Insurance Company have appealed to the circuit court of the United States for the southern district of Illinois from a decree of the district court of the United States for the said district, bearing date the 4th day of May, A. D. 1868, in a cause in which the said Charles Clark and the Buckeye Mutual Insurance Company were libellants, and the said steamer Admiral Farragut was respondent:

Now, therefore, the condition of this obligation is such, that if the above-named appellants, Charles Clark and the Buckeye Mutual Insurance Company, shall prosecute their appeal with effect, and pay all such costs and expenses as shall be awarded against them as such appellants therein, then this obligation to be void; otherwise to remain in full force and effect.

| | | |
|---|---|---|
| (Signed) | CHARLES CLARK. | [SEAL.] |
| (Signed) | BUCKEYE MUTUAL INS. CO., | [SEAL.] |
| | By HENRY H. BROWN, *Agent.* | [SEAL.] |
| (Signed) | GEO. M. BRINKERHOFF. | [SEAL.] |

Filed May 11th, 1868.

GEO. P. BOWEN, *Clerk.*

41 The depositions and documents exhibited and read in evidence upon the hearing of said cause are in the words and figures following, to wit:

Depositions of Benjamin Dunn, Jacob King, Matthias Smith, James Quinn, John Cain, and Lewis F. Sanders, in behalf of libellants, taken before Henry Phillips, special commissioner, at his office, in the city of Beardstown, Illinois, on the 25th and 26th days of January, and the 4th and 5th days of February, A. D. 1867.

*Deposition of Benjamin Dunn.*

JAN. 25, '67.

My name is Benjamin Dunn; age, 38; I live at Meredosia; I am bridge watchman on the Meredosia bridge. I have been on that bridge 3 years last September as watchman, or bridge-tender. My duties are to turn the bridge to let vessels navigating the river pass through.

42 This is a railroad bridge over the Illinois River at Meredosia. I am employed by Mr. Gilbert, the railroad master on the railroad. Mr. Gilbert looks after the hands that work on the railroad.

Question 1st. Were you or not on the said bridge on the morning of the 8th March last, when the "Ajax" was sunk at the bridge?

Answer. I was there.

Question 2nd. Did you witness all the circumstances of the said loss? (Question objected to by respondents as leading.)

Answer. I saw her when she struck.

Question 3d. Please state such circumstances as you witnessed on that occasion, in connection with said loss, commencing from the time when the Farragut left the Meredosia landing.

Answer. The steamer came straight from the dock into the edge of the piling, and struck the edge of the piling with the canal boat.

Question 4th. Where were you standing when the steamer first left the landing?

Answer. I was on the bridge, very near the centre.

Question 5th. Was the bridge at that time open or shut?

Answer. It was open.

43 Question 6th. Why was it open; and how long was it open?

Answer. It was open for the boats to go through that morning. I guess it had been about 3 hours before the Farragut came down. It is usual to open the bridge when the last train runs through, and keep it open until the next ttrain comes.

Question 7th. Who opened the bridge on that morning?

Answer. It was me, Jacob King, and Cyrus Smith?

Question 8th. What position did these two last men occupy on the bridge, if any?

Answer. Same as myself; bridge-tender.

Question 9th. Are you acquainted with the river, and its different changes and currents, at and in the vicinity of Meredosia bridge?

Ans. I am not much acquainted with the river only about and just above the bridge.

Question 10th. State, if you know, how the different currents in the river run at and about Meredosia bridge, at different stages of the water, and particularly when the water is high.

Ans. There is a twist in the water; more so when it is high than when it is low.

Int. 11th. State how this twist in the water, that you speak of,

44 influences steamboats or other boats in their passage down the river through the said bridge.

Ans. It will throw them into the piling of the bridge if they don't go right.

(Question and answer objected to by respondent on the ground, witness is not an expert.)

Int. 12. State whether or not during the three years you have been employed on the bridge, if you have noticed the changes of the currents in the river, at different stages of the water, and their influence upon boats and vessels passing down the river.

(Objected to by respondents because it is leading.)

Ans. I have noticed that the current is stronger in high water than it is in low water; when this current is strong it has more effect on the boats in high water than in low water.

Int. 13. Have you observed the courses taken by steamboats with their tows, when leaving the Meredosia landing, in order to run safely through the bridge? and, if so, state, as particularly as you can, what course is generally pursued when the water in the river is high and the current strong.

Ans. They keep the west side of the shore whenever they can,

45 in high, so that they can have a straight shoot for the bridge.

Int. 14. Look at the diagram marked "B B," attached to the deposition of Charles S. Ebaugh, and state by said diagram how you intend to be understood.

Ans. I mean that a steamer or vessel when she left the upper dock would follow the course marked on diagram as "Course of the Farragut when leaving the dock" up to position No. 1, or "A," and then, from that position, make a straight shoot for the west passage through the bridge.

Int. 15. State whether or not you saw the "Admiral Farragut" on the morning on which the "Ajax" was sunk, when she was lying at Meredosia at the dock; and what the distance is from the bridge, in a straight line, to the dock at which she was lying.

Ans. I saw her at the dock. I think the distance is about a quarter of a mile.

Int. 16. State any circumstances that led you at that time to look at the Farragut while she was lying at the dock.

Ans. We had a train very near due; we wanted her to come out before we should turn the bridge.

46 Int. 17. State whether, in your opinion, with the knowledge you have of the localities at and near the Meredosia bridge, the spot designated on the diagram as the "upper dock," and the one designated the "wreck of the Martha," are properly located on said diagram; and, if not, state how they should be varied.

(Objected to by respondents because it asks witness' opinion.)

Ans. The dock should be moved further to the east; and the wreck should be also moved further east.

Int. 18. State about far west of the dock the wreck of the Martha lies.

Ans. She may be about 100 yards, perhaps more; I never measured the distance.

Int. 19. State if you know of any repairs being made on the piling of the bridge during the fall and winter of 1865; and, if so, what such repairs were.

Ans. On the inside of the piling some timbers were placed, so that when the piling was sprung, it would not injure the rests. Some timbers were also put on the outside of the piling to strengthen the piling, because they were getting weak. This was done at low water.

47 Int. 20. State where ribbons were placed at that time.

Ans. They were put at the upper end of the piling crosswise on the piling. There was about 6 feet of water in the channel, and the lower ribband was placed about 3 or 4 feet above the water as the water then was. There was another ribband higher up on the piles, which was put on at the time the bridge was built, and had not been changed. When the "Ajax" was lost the lower ribbond was under water 6 or 7 feet. The upper ribbond was about two feet above the water. The upper ribbond is about a foot square; the lower one was about 6×12 inches.

Int. 21. Look at the diagram "B B" at the different positions numbered from 1 to 6, representing the positions in which the "Admiral Farragut" approached the bridge at the time of the loss of the "Ajax," and state whether those positions are correct.

Ans. There is no one of them correct.

Int. 22. State how the "Admiral Farragut" approached the bridge from the time she left the dock until the collision; having reference to the diagram.

48 Ans. Commencing at upper dock, which should be placed as designated on diagram by a cross, ×, marked, she approached the

bridge in the course marked on diagram as "Course of Farragut, according to testimony of Dunn."

Int. 23. State any circumstances within your remembrance, while you were standing upon the bridge and the Farragut was approaching, which would tend to confirm you in the statement that the line designated by you was the course the steamer pursued in approaching the bridge.

Ans. I stood about ½ the way across the bridge when she started; then I went to the side that she struck on.

Int. 24. State in which direction you looked when looking toward the steamer as she approached.

Ans. I looked toward the boat.

Int. 25. In order to see the steamer as she approached, did you look over the east or the west side of the bridge?

(Objected to by respondents as leading and suggestive of the answer desired.)

Ans. I was looking north.

49 Int. 26. State whether or not you thought she would clear the bridge as she approached.

(Objected to by respondents because the question is not for any fact, but the thoughts of the witness.)

Ans. When I saw her coming I knew she would strike the bridge. All three bridge-tenders talked about it.

Int. 27. From your knowledge of the currents of the river, and the courses necessary at high-water to secure a safe passage through the bridge, could the "Admiral Farragut," approaching the bridge as she did on that occassion, pass safely through the west draw of the bridge?

(Objected to by respondents because witness is not an expert, and an opinion is asked.)

Ans. No; she could not.

Int. 28. Could she or not have passed through the east draw?

(Objected to because suggestive of answer desired, and reasons in last objection.)

Ans. She could have passed through the east draw well enough; but could not possibly pass through the west draw without striking.

Int. 29. State where on the piling of the bindage the stern of

50 the canal-boat struck; that is, how far from the north end of the piling?

Ans. About 6 or 7 feet.

Int. 30. State what damage was done to the piling or bridge.

Ans. Inside the piling it jerked some of the braces loose, and the floated down the river. It sprung the rests so we could not turn the bridge.

Int. 31. Explain what you mean by rests.

Ans. The rests are 4 piles, upon the tops of which is a cross-piece of timber, upon which the end of the bridge rests when open. It was sprung so we could not close the bridge for the train.

Int. 32. Look at the diagram "B B" and state if the position No. 6, representing the steamer and canal-boat when they struck, is correct.

Ans. It is not correct.

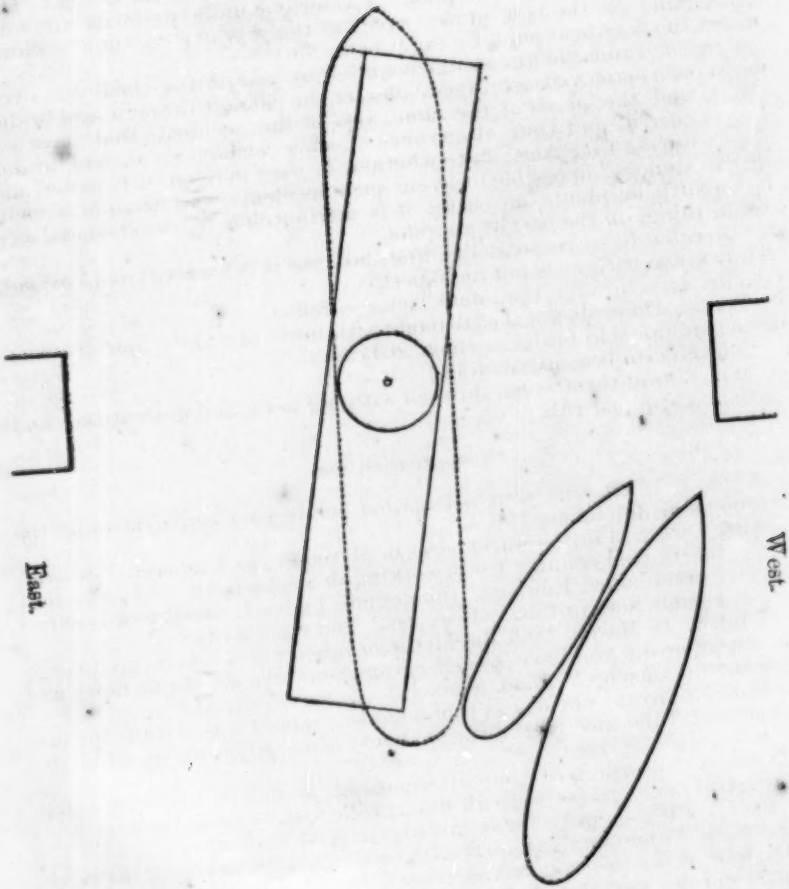
Int. 33. Look at the diagram now presented you, and which will be attached to this deposition, marked "C C," and state whether or not the position of the boats when she is therein correctly designated.

(Objected to by respondents, because leading.)

Ans. That is correct. That is the form when she entered the

51 bridge. She headed right for the west pier.

"C. C."—H. P., Com'r.



52 Int. 34. State what, if anything, you know relating to the circumstances connected with the sinking of a boat by the "Tiger;" also a barge by the "Schuyler;" also of two ice-boats by the "Storm;" also a hay-boat by the Sam Clark, all happening in the spring of 1866.

Ans. The "Tiger" is not fit for a very heavy tow; she is too light; she ran into the middle of the piling. It was a canal-boat loaded with salt. This was not in 1866; it was in the spring of 1865; she had from 10 to 12, or may be more, in tow at this time. The "Schuyler" came down near midnight and run into the very east end of the piling. (The witness here points out such a position on the diagram as indicates that he meant the boat struck the east side of the north end of the piling.) This was clearly the fault of the pilot. I know one of the ice-boats was sunk by running on the bow of the wreck of the "Ajax." I know nothing about the hay-boat sunk by the "Sam Clark."

Int. 35. From the knowledge acquired by you during the 3 years you have been employed as bridge-tender, of the passage through said bridge and the perils of the same, also of the accidents that have oc-
53 curred, and your observance of such accidents, at said bridge during that time, state whether, in your opinion, it is under any circumstances impossible to avoid such accidents, and whether or not, when such accidents do occur, it is attributable to carelessness, as a usual thing, on the part of the pilot.

(Objected to by respondents, first, because it is leading; and, second, because the witness is not an expert.)

Ans. It is through the pilots being careless.

Int. 36. Do or do not the steamers with tows, at a high stage of water, pass through said bridge without striking?

(Objected to because leading.)

Ans. Lots of them come through with big tows, and don't strike, and some of them just rub.

*Cross-examination.*

X-int. 1. What was your occupation before your employment on the bridge as bridge-tender?

Ans. I worked in the warehouses in Meredosia as a laborer. Before I left the old country I was working in a coke-bank. I was born in
54 Staffordshire, England. Sometimes I mined; sometimes I coked; I came here in 1862. I can read, but can't write.

X-int. 2. In March, 1866, did all the bridge-tenders remain up through the night, or did you have some arrangement who should lie down and who should keep up? If so, what was the arrangement?

Ans. The arrangement was that some one should watch while the others slept, till the time for the trains should come, when we would all get up to turn the bridge.

X-int. 3. According to your arrangement, as stated, how long before the arrival of the trains were all hands called up to mind the draw?

Ans. It was generally about three-quarters of an hour.

X-int. 4. From midnight, on the 7th of March, 1866, to noon, 8th March, 1866, how many railroad trains passed over the bridge, and at what hours, and in which direction?

Ans. There was one, a freight train at 4 o'clock in the morning of the 8th, going west; there was another at 5, passenger train, going east. I am not certain whether the passenger train passed at 5 or quarter past 5 o'clock.

55 X int. 5. At what hour did this disaster to the "Ajax" occur?

Ans. It took place about 4 o'clock a. m. of the 8th.

keep the west shore more? and if there is any other reason, state it.

Ans. There is no other reason.

X-int. 35. Do you mean to say, in answer to direct interrogatory No. 35, that in all cases where there is disaster by boats striking the bridge there must necessarily be carelessness on the part of the pilot, officers, or crew?

Ans. There are some boats with big tows that come down there that can't help it.

X-int. 36. Why can't boats with big tows help it?

Ans. The current is so strong.

X-int. 37. Do boats having a tow that make a safe passage in high water through the bridge, always come into the bridge in the same shape, or in the same manner?

Ans. They keep the west shore and have a straight shoot to make a safe passage. Another way is, that steamers back up just before getting to the bridge and then go through safely.

X-int. 38. Are the timber braces on the inside of the piling, placed there during the fall of 1865, in any manner fastened to the piling; and, if so, how?

62 Ans. Some are bolted, and some iron rods go straight through from bottom to top.

X-int. 39. Do you know if there was any filling up on the track of the railroad west of the bridge, of the places where there had previously been piling, through which the water could run in the fall or winter of 1865?

Ans. I don't know of any.

X-int. 40. You have stated that a freight train was due at 4 o'clock a. m. on the 8th of March, 1866, going west. Did that train come and pass over the bridge?

Ans. The train was there at 4 o'clock. She did not go over the bridge until 5½ o'clock, perhaps more, because we could not turn the bridge.

X-int. 41. What time did you turn the bridge?

Ans. It was about half past five o'clock a. m.

X-int. 42. Were there any persons there beside the bridge-tenders?

Ans. Mr. Morley was there.

X-int. 43. Who was the superintendent under whom you worked on the 8th March, 1866?

Ans. William Morley was the bridge boss.

63 X-int. 44. Have you or not talked with Captain Clark, the libellant in this case, about your testimony in this case?

Ans. He asked me if I had seen his boat strike the bridge. I told him I had.

X-int. 45. When did you first talk with him?

Ans. Some time after the boat was sunk.

X-int. 46. About how long after?

Ans. I can't tell how long; it might be a month or six weeks after; may be more.

X-int. 47. How often have you talked with him?

Ans. Only that one time, that I know of. I came up here with him. He came talking again about it last week. He talked with me some time this winter; some time about Christmas.

X-int. 48. Who made the plat "C C F"

Ans. Mr. Proudfoot made it.

*Re-direct examination.*

Int. 37. Please state, as nearly as you can recollect, all that Captain

64 Clark said to you on the several occasions on which you say he talked with you.

(Objected to on the ground that respondent asked for no conversation, and the question asked the declarations of the libellant.)

Ans. He told me if he had anything to do about this trial, he should want me for a witness; me, and Jack, and Smith. That is all he said to me.

Int. 38. Where did you learn to read?

(Objected to as not relevant.)

Ans. What little learning I have got I learned at Sunday-school.

Int. 39. How long was the steamer in coming from the dock to the bridge?

(Objected to as not proper in cross-examination, it being examination-in-chief.)

Ans. About 5 or 6 minutes, as near as I can guess.

Int. 40. How long is the drawbridge?

Ans. Very nearly 300 feet.

Int. 41. State whether or not you had seen the "Schuyler" coming down with the barge in tow before she struck the bridge, and whether or not she came down in such position that a collision was inevitable.

65 Ans. I saw her when she was coming down; she seemed to be heading for the piling.

Int. 42. How far off was she when you first saw her?

Ans. She was coming round the bend when I saw her, way out in the river. She was about opposite the wreck of the "Martha."

Int. 43. State what you did, if anything, in reference to the bridge or piling after the collision, in order to get it in working order.

Ans. I got into a skiff and went after Mr. Morley. He came, and all four of us tried to move the bridge and could not do it. Then we got a sledge-hammer and broke one of the castings and knocked the wheel out of its place and then the bridge swung.

JANUARY 26TH, 1867.

Int. 44. During your 3 years' experience at the bridge, have you at any time known the water to be higher than it was at the time of the loss of the "Ajax?" If so, state when, and how high it was.

Ans. In the spring of 1865 it was higher; I should think it was 10 or 12 inches higher.

66 Int. 45. State whether or not about the time of, or soon after, the loss of the "Ajax," any other tows passed through the said bridge, and whether or not they did so safely.

Ans. It might be the same week; I can't tell; they came down safe enough. There were lots of them coming down there all the time. Some of them went through the east passage; at high-water they can go through there.

*Re-cross-examination.*

X-int. 49. Do you mean to say that there were no other disasters by striking the piling of the bridge during the high water of the spring of 1866, when the "Ajax" was lost?

Ans. I never knew of any doing any damage. There were some that struck the piling, but without injuring themselves.

X-int. 50. Did you ever have any difficulty in moving this draw on its rollers at any other time than the time you have spoken of?

Ans. We did have similar difficulty in 1865. There were no
67 timbers in it then. It was caused by the boats striking against it in tow of the "Tiger," as hereinbefore stated. We have had no other difficulty since I have been there, at that same end of the piling. We have had trouble by boats coming up the river running into the lower end of the piling.

X-int. 51. Do boats on the down trip pass as often in high water through the east passage as through the west passage; if not, why not, if you know?

Ans. They chiefly go through the west passage because it is the channel. That is the only reason.

X-int. 52. Is it not true that if boats should strike on the down trip passing through the east passage, that the boat would strike against a rock pier?

Ans. Yes; I guess they would.

X-int. 53. Does the diagonal current or twist in the water affect boats passing down through the east passage?

Ans. It does at high water.

X-int. 54. How is the distance from the east to the west bank
68 of the river at the bridge, as compared with the distance from the centre pier of the bridge to the upper dock—more or less?

Ans. It is farthest from the bridge to the dock; I can't say how much. It is not much farther.

*Re-direct examination.*

Int. 46. When did the "Tiger" and the "Schuyler" sink their tows, and when did the ice-barge sink, as before mentioned by you?

Ans. The "Tiger" sunk her canal-boat in the spring of 1865. The "Schuyler" sunk her barge the same spring. The ice-barge that struck the wreck of the "Ajax" was in 1866.

Int. 47. Has the bridge at the north end been so broken by vessels colliding with it as to prevent its turning, since it was braced as before said, except in the case of the "Ajax?"

Ans. It has not.

(Signed) BENJAMIN his + mark. DUNN.

69 *Deposition of Jacob King.*

My name is Jacob King; age, 40 years; residence, Meredosia; am watchman on the railroad. On the 8th March, 1866, I was bridge-tender on the Meredosia railroad bridge. My duties were to turn the bridge. I had been on the bridge, up to the 8th March, 1866, 10 days. I was employed by Mr. Morely, bridge boss.

Int. 1. State whether or not you saw the collision which took place that morning.

Ans. I did.

Int. 2. State all the circumstances attending the same within your recollection.

Ans. In the evening from 7 to 8 I heard the Farragut signaling; and I know it was the Farragut because she whistled 4 times. She stopped at the Meredosia landing, at the distillery or upper dock. She loaded freight that night. At 3 o'clock of the morning of the 8th March all the bridge-tenders is ready to turn the bridge. The "Farragut" gave the signal to start out. She did so, and come pretty nigh straight
70 from Meredosia dock towards the bridge, and struck the piling

from 5 to 10 feet on the west side from the north end of the piling. The canal-boat sunk from 50 to 100 yards below the bridge.

Int. 3. Before this collision had any other steamboats and their tows passed down the river through the bridge, during the 10 days which you say you had been on the bridge? And, if so, state whether they approached the bridge in the same manner that the "Farragut" did on this occasion; and, if not, how they approached the bridge.

Ans. There had no other boats passed the bridge going down before the "Farragut."

Int. 4. State whether or not any steamers with their tows passed down the river through the bridge about the time, or shortly after, the Farragut did. If so, state whether they passed down safely, and how the approached the bridge to make such passage.

Ans. There were steamers with tows passed down through the bridge every day after the Farragut passed. They got through safely. They would come on the west side of the river.

Int. 5. When the Farragut came down, did she approach the
71 bridge in the same way the others did you speak of? If not, state what the difference of approach was.

Ans. She did not come towards the bridge the same way the others did. She came from the Meredosia dock pretty nigh straight for the west draw.

Int. 6. State whether, in your opinion, judging from the course that other steamers took at that time to pass safely through the bridge, and from your experience since that time, the Farragut, following the course she did, could have avoided colliding with the piling.

(Objected to by respondent, on the ground that an opinion is asked of one not an expert.)

Ans. I am no boatman. I do not know how a boat must be handled. On that account I cannot say.

Int. 7. State whether or not, as the Farragut approached, you formed any opinion as to whether or not she could pass safely through the bridge on that occasion, and, if so, what that opinion was.

(Objection same as to last interrog.)

Ans. I have sworn to tell the fact. I have no guess here. On
72 that account I have nothing to say. If you ask me what I think, I think the boat would strike, but I am not sure. I be no boatman.

Int. 8. State what, if anything, you did as the Farragut approached the bridge.

Ans. I did nothing but look at her.

Int. 9. What damage, if anything, was done to the bridge by the collision?

Ans. It throwed the rests-wheel from the bridge out of its place, in such a manner that we could not turn the bridge.

*Cross-examination.*

X-int. 1. Did you see the Farragut as she was leaving the upper dock?

Ans. I did.

X-int. 2. State the manner of her leaving.

Ans. I cannot tell. I don't know whether her head was down or up.

X-int. 3. Do you know whether she came bow first or stern first?

Ans. She came head first.

73 X-int. 4. Was it moonlight, and could you see her plainly as she left the dock?

Ans. It was not moonlight. I see her plainly ½-way between the dock and the bridge that she came head down stream.

X-int. 5. Was any other boat or boats damaged at that bridge while you acted as bridge-tender? If so, specify their name and number.

Ans. One boat sunk below the bridge on account of the wreck of the "Ajax." There were no others that I know of while I was on the bridge.

X-int. 6. At what time did you begin your occupation as bridge-tender, at what time did you close your occupation, and were you on the bridge all the time in that occupation between the two dates?

Ans. I came on the bridge two days before the ice broke, but I could not tell the date of the month. I quit the 10th of April. I was on the bridge all the time, day and night.

X-int. 7. How long before the collision of the "Ajax" with the bridge did the breaking of the ice you speak of occur?

Ans. I cannot tell. I had been on the bridge about 10 days before the "Ajax" came down.

74 X-int. 8. Where have you lived, and what has been your occupation since your residence in this country?

Ans. I have been in 16 States. I do most every kind of work since I have been in this country.

X-int. 9. How long have you lived in Meredosia?

Ans. Not quite 2 years.

X-int. 10. What has been your occupation at Meredosia?

Ans. I have worked on the railroad one year, and have worked in the warehouse.

(Signed) JACOB KING.

*Deposition of Matthias Smith.*

My name is Matthias Smith; age, 36; residence, Clayton, Ill's; occupation in charge of R. R. tank; I went as bridge-tender on the 1st March, 1866, on the Meredosia bridge; Mr. Morely employed me.

Int. 1. State whether or not you saw the collision which took place on the morning of the 8th March, 1866; and, if so, state all the circumstances connected with the same, within your recollection.

75 Ans. I saw the collision. I saw the "Farragut" after she had pulled out; I had been to bed, but had got up. I was out on duty some time before she came. She came from the dock where she loaded, (the upper dock,) and she came kind of angling from the east side to the draw. I made remark before she came there, that she would certainly strike the piling; she struck the upper end of the piling with a very heavy force, which gave us about an hour and a half trouble to get the draw turned.

Int. 2. State how long you were employed in the capacity of bridge-turner on the said bridge.

Ans. I would say about 3 months.

Int. 3. State whether or not during the time you were so employed, either before or after the collision of the Farragut, other steamers and their tows passed down safely through said bridge, and whether or not you observed the courses adopted by them in coming down the river to effect a safe passage.

Ans. There were a great many tows came down there while I was on the bridge. Am not positive whether any came down before the Farragut did; but a great many afterwards—most every day afterwards; I observed the courses adopted by the pilots coming through.

76

Int. 4. State what course or courses were adopted by the pilots.

Ans. They bore heavy to the west side, until they got to the west pier, and they generally slide through.

Int. 5. What other precautions, if any, would they adopt?

Ans. They would generally come through very slow, and be very careful how they came through.

Int. 6. State, if you know, why they would bear heavy to the west side and adopt these other precautions.

(Objected to by respondents, because witness is not an expert.)

Ans. Because the channel bears on that side, and the current runs across it cat-cornered.

Int. 7. Look at the diagram marked "B B," and state from that diagram whether the course taken by the "Farragut" is truly designated from 1 to 5.

Ans. They are not correct. She did not come that way. She came more from the east.

77 Int. 8. Where did the canal-boat strike the piling, and how?

Ans. She struck about 6 feet from the north end of the piling, on the west side.

Int. 9. At what rate of speed did she come?

Ans. I cannot say exactly; she was under pretty good headway.

*Cross-examination.*

X-int. 1. In reply to the 4 and 5 interrog., does your description of the manner of boats coming through the bridge apply to regular tow-boats, with several canal-boats or barges in tow, or to passenger boats, like the "Admiral Farragut," with but a single boat in tow?

Ans. The tow-boats always went through with more caution than the packets did.

X-int. 3. Was there any place on the bank for the boats to hitch a line to when the water is high?

Ans. There were some trees there, and they hitched to those. I never saw a packet or freightboat hitch to them.

X-int. 4. Were there any other boat or boats sunk or damaged while you were on the bridge?

78 Ans. Another canal-boat struck the piling the same spring and sunk. I don't know what boat it was that done it. I think it was about the 15th April. I saw the wheat pouring out of her as she went through the draw.

X-int. 5. How long have you lived at Meredosia?

Ans. Between 5 and 6 months.

X-int. 6. Have you had any experience in river navigation?

Ans. I never have.

X-int. 7. Did you see the "Farragut" as she left the upper dock?

Ans. I did not see her when she first started.

X-int. 8. How far was she south of the point of the island when I first saw her?

Ans. I could not say; she had just cleverly got straightened out when I saw her; she was not half-way to the island. She was considerably east of the island.

X-int. 9. Did you see her round out from the dock?

Ans. I did not.

X-int. 10. What was your position on the bridge when looking at the Farragut?

79 Ans. I stood on the north end of the bridge.

(Signed) MATTHIAS his + mark. SMITH.

*Deposition of James Quinn on part libellant.*

FEB. 4, '67.

My name is James Quinn; age, 39 years; residence, Beardstown, Illinois; occupation, been engaged in farming most of my life.

Int. 1. State where you were on the night of the 7th and 8th March, 1866; the night upon which the canal-boat "Ajax" was sunk.

(Objected to by respondents because leading.)

Ans. I never charged my mind with dates. I was on board the "Admiral Farragut" at the time the "Ajax" was sunk.

Int. 2. State whether or not you saw the "Admiral Farragut" when she left the dock at Meredosia on that night; and, if so, where were you at that time?

Ans. I suppose I would have been apt to see her when I was aboard of her. To the best of my recollection; I was on the hurricane-deck.

Int. 3. State how long you had been on the hurricane-deck be-
80 fore the collision occurred.

Ans. I could not tell how long. I was on from the time—as near as I can recollect—that she left the wharf until the collision.

Int. 4. Do you know the mate of the "Admiral Farragut," Christian F. Nieman? and state whether or not he was on the hurricane-deck from the time the Farragut left the wharf until the time of the collision.

Ans. I know him. If he was there, I did not see him; I would not be positive about it.

Int. 5. State what you were doing on the hurricane-deck.

Ans. I could not say I was doing anything, only looking around.

Int. 6. Were you standing still or were you walking about?

Ans. I was walking about part of the time, and part of the time standing still, as near as I can recollect.

Int. 7. Did you see any other person on the hurricane-deck?

Ans. I don't recollect seeing any other person but Capt. Ebaugh, and I think I saw his son.

Int. 8. Where did you see Capt. Ebaugh?

81 Ans. I seen him go into the pilot-house, as near as I can recollect.

Int. 9. When did you see him go into the pilot-house?

Ans. If I recollect right, it was about the time or soon after we left the dock.

Int. 10. State, if you can recollect, the position of the boat, as to how she was headed at the time you saw Capt. Ebaugh enter the pilot-house.

Ans. To the best of my recollection, she was headed down stream, but could not say positive. That is the way my memory serves me now.

Int. 11. Was she or not at that time headed for the bridge?

(Objected to by respondents because leading.)

Ans. I could not say. To the best of my recollection, she was headed down stream; but whether she was headed to the bridge, I could not say.

Int. 12. Where did you see Capt. Ebaugh's son?

Ans. To the best of my recollection, I saw him come out of the pilot-house. Where he went, I can't say; perhaps down-stairs. He may have gone back into the pilot house.

Int. 13. When did you see him come out of the pilot-house?

82 Ans. I don't know that I could tell when. It was some little time after we left the dock.

Int. 14. Was it before or after the collision?

Ans. It was before the collision.

Int. 15. Where were you on the hurricane-deck just before and at the time of the collision?

Ans. To the best of my recollection, I was on the larboard side of the boat. I was looking at it, or at least at the bridge.

Int. 16. State whether or not you could readily see objects upon the hurricane-deck.

Ans. Yes, sir; I should say I could.

Int. 17. Had the mate, or any other person, been standing on the larboard side on the hurricane-deck, would you or not have seen him?

Ans. I would think I would. I was not looking around particularly to see who I could see.

Int. 18. You state that you saw Capt. Ebaugh and his son; were these the only 2 persons you saw while walking back and forth on the hurricane-deck?

Ans. They were the only ones that I recollect of seeing.

83 *Cross-examination.*

X-int. 1. In what capacity were you on the Farragut that night?

Ans. I hardly know. I don't know whether I was considered a passenger or a watchman.

X-int. 2. Do you wish to be understood as saying that you were not paying particular attention to what was going on on board that night, and therefore did not speak positively in answer to any of the questions that have been asked you in the direct examination?

Ans. Yes, sir; I wish to be so understood. That is, while the boat was running, I did not consider it my duty or business to pay particular attention.

X-int. 3. Was the night cold or warm?

Ans. To the best of my recollection, it was neither.

*Re-direct examination.*

Int. 19. Why do you state that you do not know whether you were on board as a passenger or a watchman?

Ans. I applied to Capt. Ebaugh for a situation as watchman, but I did not know the duties, and there was another man on board
84 who did the duties of watchman; and I went down to St. Louis with the captain, and when we got there he didn't charge me anything for my passage.

(Signed) JAMES QUINN.

*Deposition of John Cain—p'ff.*

FEB. 5, '67.

My name is John Cain; age, 36 years; residence, Beardstown, Illinois; occupation, laborer.

Int. 1. State how you were employed on the 7th and 8th March, 1866.

Ans. I cannot recollect about that. I can't tell rightly how I was employed.

Int. 2. Were you or not at that time employed as a roustabout or deck-hand on the steamer "Admiral Farragut?

Ans. I was on her at the time the boat was sunk at the Meredosia bridge. I don't know what boat it was. They said it belonged to Capt. Clark.

Int. 3. State if you saw the collision at the bridge.

91 Deposition of Charles Clark, Dennis Chapman, Ephraim Morrison, Michael Dempsey, Peter Goulette, Paul Pauliste, and James Matthews, taken before Azariah T. Galt, notary public, at his office in the city of Chicago, Illinois, on the 27th day of October, A. D. 1866, the 11th day of February, and the 6th and 7th days of March, A. D. 1867.

*Deposition of Charles Clark.*

OCT. 27, '66.

1st int. What is your name, age, occupation, and place of business?

Ans. My name is Charles Clark; my age is 37; my occupation is canal-boating; I live on board of the canal-boat "Glasgow," now lying in the port of Chicago.

2nd int. Do you know the parties to this suit?

Ans. I am the libellant. I know the steamer "Admiral Farragut."

3d int. State how you were employed about the 7th of March, 1866, and what was your occupation at that time.

92 Ans. My occupation at that time was captain and owner of the canal-boat "Ajax," and freighting grain from Beardstown, on the Ilinois River, to St. Louis, Missouri.

4th int. State what the condition of the canal-boat Ajax was at that time as to seaworthiness.

Ans. She was in good condition, and had held a cargo of grain for three months, lying at Beardstown; and when we overhauled the grain from the hatches, we found it dry, safe, and secure. She had been inspected the fall before by the canal-boat inspector, and had pronounced her sound and in good condition, and had classed her "A 2."

5th int. State where the canal-boat Ajax was lying on the 7th day of March, 1866; and state whether or no any contract for towage was made at that time; if so, with whom and by whom that contract was made, and the terms thereof.

Ans. She was lying at the port of Beardstown. A contract was made with Capt. Charles S. Ebaugh, of the steamer "Admiral Farragut," by myself and Mr. Dutch, the principal owner of the cargo of
93 wheat and oats, that the "Farragut" should tow the canal-boat "Ajax" from port of Beardstown to the port of St. Louis and back to Beardstown, for the sum of $130 00.

6th int. State whether that contract was carried out, and all the circumstances connected with it.

Ans. On the afternoon of the 7th of March, '66, about 4 o'clock, the crew of the Admiral Farragut took the Ajax and lashed her alongside of the Farragut. The bow of the Ajax was from four to ten feet ahead of the bow of the Farragut, lashed with double lines. We proceeded down the river safely until we got to Meredosia, where the Farragut stopped to take on flour and sundry freight. We got there about 2 o'clock in the morning of the eighth, and remained there about an hour. The Meredosia bridge spans the Illinois River three or four hundred yards beyond the landing where the Farragut stopped. It is necessary, in backing out from the landing at Meredosia, in order to clear the bridge in going through, to keep near the opposite shore, and they have to cross the river at Meredosia for this purpose. There is a bend in the river at this point. I was on the deck of the Ajax, on watch, at the time, and
94 a man named John Quigg, who owned a portion of the cargo, and who went down with me to assist in the management of the canal-boat, and to sell his grain, was on deck also; and also

Frederick Nolte, a part owner of the Farragut, was on the deck of the Ajax. I noticed that the Farragut did not keep over as far to the other side of the river as she should have done to get through the bridge safely, and was running very fast. I said she was going to strike in going through the bridge, and ran for a fender, and when I got to the side of the boat with it I saw it was too late, and could not ward off the force of the blow. The canal-boat was mashed between the pier and the Farragut. The force of the blow was so great that it knocked me down. My wife was on board in a berth, and I ran for her and got her out, and threw a feather-bed on the water, and I put my wife upon it; by this time the water was over the deck of the stern up to my arm-pits. The boat went down in a minute to a minute and a half. My wife and myself were picked up from the water by the hands on board of the Farragut. Mr. Quigg was drowned. I saw him
95 only a moment before the collision, standing on the bow of the boat. The canal-boat and cargo and everything aboard, including my wife's and my wearing apparel, and in fact everything we had in the world, were a total loss. Subsequently a trunk of our wearing apparel was found by some fishermen, very badly damaged, which I purchased of them for twenty dollars.

7th int. State why it is necessary to keep on the opposite side of the river from Meredosia in order to run safely through the Meredosia bridge.

Ans. There is a bend in the river this side of Meredosia, and the current of the river is such that it is necessary to keep on that side of the river to get through the bridge safely. I have been in the habit of running down the river 3 or 4 times a year, in tow of steamboats, since 1857, and have invariably noticed that in order to get through safely the boats must hug the opposite shore.

8 int. State whether any other precautions are necessary; and, if so, what are they?

Ans. I have always noticed that boats to get through safely with their tow, at high water, should run down near the bridge under a slow bell, that is, half or quarter speed, so as to have full control of the
96 speed of the boat, to stop her, if any accident occurred. Sometimes, in my experience, they have had to back several times in order to get a straight shoot through the bridge, and sometimes have to get a stern-line out to check them through. These precautions are more necessary at high than at low water, as the current is stronger.

9 int. State whether the Farragut on this occasion exercised any of the precautions which you have stated above were necessary.

Ans. She did not. She did not keep on the opposite of the river as she should have done; neither did she slow her engines, but continued with a full head of steam, at the rate of fifteen or twenty miles an hour, up to the moment of the collision. She came down flanking across the pier, not having got over far enough on the opposite side of the river to take the proper current to carry her through.

10th int. State how the weather was about the time of the collision.

Ans. Rather a raw, cold morning; middling clear, but rather dark, and considerable wind.

11 int. State who was at the wheel of the Admirable Farra-
97 gut just before, and at the time of, the collision.

Ans. I do not know, only from the statement of Captain Ebaugh and his son, shortly after the collision, that same morning.

12 int. State under what circumstances this was told you.

Ans. I went up to the wheel-house of the Farragut, after I was rescued, to dry my clothes. I there met Captain Ebaugh at the wheel. Captain Ebaugh said to me, "Wasn't that the damnedest occurrence you ever heard of?" He further said, "By God, I am a steamboatman, and it is the first time I ever done any damage in this bridge. I have criticised every God-damn man that ever did any damage in this bridge. By God, there is no use of any accident happening; it is not necessary. I don't care a damn for the canal-boat; I ought to pay for it, and to pay for the whole thing." He said he was sorry for the loss of life. He then went on to say that Henry (his son) had the wheel just before the collision, and he saw the boy had not the Farragut in the right place, and he said he took the wheel and "By God, he had not bettered
98 it any." I have given the above conversation, with the oaths, as nearly as I can recollect, just as it occurred.

13th int. How old was the boy Henry, and was he or not a licensed pilot?

Ans. I should think he was then from nineteen to twenty years old, and I judge from his age that he was not a licensed pilot.

14th int. State whether you had any conversations with any other parties interested in the Farragut; if so, state such conversations.

Ans. Henry, the son, told me that he had the wheel and his father took it from him; and if he had not done so, he would have done better than his father did. On the trip up from St. Louis, I heard Captain Ebaugh say to some parties on board of the Farragut, that "he did not care a damn for all the canal-boats, and he wished they were all sunk; but he was sorry for losing any lives." I heard his son Henry, on the same trip, say about the same thing.

15 int. State, if you know, what would induce Captain Ebaugh to make such a remark in relation to the destruction of canal-boats?

Ans. The only reason I can think of is that the canal-boats
99 carry a large amount of freights at lower prices than the steamboats, and if the canal-boats were out of the way the steamboats would get. The Admiral Farragut is a freight-boat, and not a regular tow-boat.

16 int. State what amount of freight, in money, you would have received on the safe delivery of the cargo at St. Louis, over and above all costs and charges.

Ans. The papers were lost at the time of the collision. I think the gross freight would have been over $400 00. The costs of the trip would amount to about $150 00, making a net profit of about $200 00. The freight agreed to be paid was eight cents a bushel, and the cargo was about 5,000 bushels.

17 int. State, as nearly as you can, what was the value of the personal effects you lost by the collision, and enumerate such as you can recollect.

Ans. Nearly everything I had in the world was aboard of the boat; my beds and bedding, sheets and pillow-cases, crockery, all my wife's and my wearing apparel, two silver watches, two guns, one revolver, and several articles of gold jewelry. The two guns I afterward recovered, in a very damaged condition, by paying $5 00 for them. I
100 feel satisfied that five hundred dollars would not replace the articles lost.

18 int. What, in your estimation, was the cash value of the Ajax at the time of the collision?

Ans. I considered her worth about $3,000 00.

(Signed) CHARLES CLARK.

*Deposition of Dennis Chapman.*

FEB. 11, '67.

1st int. What is your name, occupation, and place of residence?

Ans. My name is Dennis Chapman; am of lawful age; I am a commission commercial broker, chartering vessels, &c.; I live in Chicago.

2 in. State what your business was in August, 1865.

Ans. I was at the same business then, and also was marine inspector for the Board of Underwriters of Chicago.

3d int. State what were your duties as such marine inspector.

Ans. It was my duty to classify canal-boats, and to see that they were in condition to carry grain.

101 4 int. State whether or not you know the canal-boat Ajax, and whether or not, as such marine inspector, you make an inspection of said canal-boat, and where.

Ans. I did know the canal-boat Ajax; I did, as such marine inspector, inspect the canal-boat Ajax the 12th of August, 1865.

5th int. Did you at that time issue a certificate of inspection?

Ans. I did.

6th int. Look at the paper now handed you, and which will be attached to this deposition and marked Exhibit No. 1, and state whether that is the certificate you issued under that inspection.

Ans. It is.

[Copy.]

*Exhibit No. 1.*

A. T. G. N. P.

[5-ct. stamp.]

PORT OF CHICAGO, ILLINOIS,
*Chicago, Aug.* 12, 1865.

I, the undersigned, D. Chapman, have examined the canal-boat
102 Ajax of Chicago, and find her to be in good running condition, and fit to be employed for six months in the transportation of freight on the Illinois and Michigan Canal, and Mississippi and Illinois Rivers; subject, however, to reinspection at any time.

A 2.

Given under my hand the day and year above written.

Fees, $5 00.

(Signed) D. CHAPMAN,
*Marine Inspector.*

7 int. State how you made the inspection of the Ajax, and state particularly the condition in which you found her at that time as to soundness of timber and planks.

Ans. As usual I had them take up her floor-planks and examined her timbers, and then had a thin blade-knife, which I ran between the seams of the lining of the boat, by which I could discover whether her timbers were sound or rotten. Had they been rotten I should have discovered it at that time. I rated her as a good second-class boat; that is,
103 "A 2." I think she was sound at that time. I have no doubt of it.

8 int. State if you know the history of the Ajax; and, if so, what you know in regard to it.

Ans. I know she used to be called the "Nile," and was torn down; so

much of her that they could change her name, which they did, and called her the Ajax. She was rebuilt in the winter of 1863 and 1864. Upon my inspection of her I found her thoroughly rebuilt, and a good, staunch boat.

9 int. State what, in your opinion, was her cash value at the time you made such inspection.

Ans. As boats were selling at that time, she was well worth ($2,500 00) twenty-five hundred dollars.

(Signed) D. CHAPMAN.

*Cross-examination of Dennis Chapman.*

MAR. 7, '67.

1 x-int. At whose request did you inspect the canal-boat Ajax?

Ans. Captain Charles Clark; and also at the request and for
104 the benefit of the different insurance companies.

2 x-int. Where did she lie at the time; and was she empty or loaded in whole or in part?

Ans. I don't remember where she was lying at the time, but somewhere in the Chicago Creek. When I inspected her she was empty.

3 x-int. How long do you think you were engaged in making such inspection?

Ans. Not to exceed half an hour; perhaps not so long.

4 x-int. Have you ever worked at the building of boats or any other carpentry business?

Ans. I have, sir.

5 x-int. Where, and how long?

Ans. In the city of Cleveland, for three winters, on quite a number of vessels and propellers, as ship-carpenter. These were the only seasons I worked at such business.

6 x-int. Do not the planks and timbers of canal and other boats rot in the centre, while the outside or shell appears to be sound?

Ans. Sometimes they do and sometimes they do not. It is not always the case.

105 7 x-int. Did you make such an examination of the Ajax, at that time, that you could tell what parts of her were retained from the old canal-boat "Nile?"

Ans. That was a matter I did not take into consideration at all. I don't know that I gave it any thought.

8 x-int. How long had you known the canal-boat Nile?

Ans. I think for about 4 years before he name was changed.

9 x-int. Do you know what parts of the Nile were retained in the Ajax?

Ans. I don't think there was much, if any. There might have been some of her frames.

10 x-int. Have you any certain knowledge on the subject, one way or the other?

Ans. I know the "Ajax" used to be called the "Nile," and when she was rebuilt she was so much cut down that they changed her name. They have that privilege. I have no certain knowledge.

11 x-int. Could you tell from your inspection whether or not the timbers which were retained from the Nile were in fact sound or rotten inside?

106 Ans. I don't know that I could tell what timbers were left in; I know that when I inspected her I considered her sound, or I

would not have passed her as I did. I could not tell whether any of the timbers of the Nile were left in her or not.

12 x-int. From aught you know, were any timbers retained from the old Nile?

Ans. I don't know that there was.

13 x-int. How do you know that the Ajax was built of the Nile?

Ans. From what I have heard; I don't know from my own knowledge, but only from hearsay; from Mr. Clark and her former owner.

14 x-int. Who took up the planks and assisted you in making the examination, as stated in your answer to the 7th direct interrogatory?

Ans. I don't know whether it was the captain or his men; it was some of the crew of the boat.

15 x-int. Were the planks taken up in more than one place?

Ans. The planks were taken up the whole length of the boat, on both sides of the keelson.

107 16 x-int. Could you tell whether any of the timbers which you saw and examined were or not rotten inside?

Ans. I think I could, so as to satisfy me that they were sound enough for the purposes required.

17 x-int. How could you tell whether a timber, apparently sound and smooth on the outside, was not decayed inside, by the examination you then made?

Ans. By striking them with a hammer or ax.

18 x-int. Did you do so in this case?

Ans. Yes, sir.

19 x-int. Does not a canal-boat usually first give way in the part called the knuckle?

Ans. I think not as often as in other places.

20 x-int. At what other points do you think they first give way sooner?

Ans. I think a canal-boat gives way soonest about one-third way from forward aft.

21 x-int. Did you make such an examination of that boat as you would if you were examining her with a view to buying her yourself?

108 Ans. I did, sir; for I think I was very nearly as much interested.

22 x-int. How do you rank the best boats?

Ans. "A 1."

23 x-int. State what were the points of difference between such a boat and the Ajax at that time?

Ans. An "A 1" boat is supposed to be sound and new, and well fastened and built of first-rate material. An "A 2" boat is not supposed to be altogether sound; it will admit of a little decay, and I have often allowed it when I did not think it would interfere with the safety of the boat and her ability to carry. Some of the planks of the Ajax were of pine, which could not be admitted in an "A 1" boat; if her planks had been all oak, I should have classed her an "A 1" [1] boat.

24 x-int. How much of her planking was pine?

I think from streaks all around, except forward and aft, where they had to bend, and there they were of oak.

25 x-int. Was that the only reason for rating her as "A 2," and was your judgment of her quality and condition, at that time, in no

109 manner influenced by your understanding that she had been in part rebuilt from the old materials of the Nile?

Ans. That was the only reason for rating her A 2; my judgment was not influenced by my knowledge of her being rebuilt in part from the Nile.

*Re-examination.*

1 int. Are you acquainted with the acts of Congress relative to the right of vessels to change their names, and to the circumstances under which they obtain that right?

Ans. Not so that I could explain it definitely; I have an idea and know pretty near.

2 int. What amount of tearing down and rebuilding is necessary in order to have the privilege of a change of name?

Ans. I think it is either two-thirds or a half; I don't think the law applies to canal-boats.

(Proctor for respondent objects to the question and answer, as the law speaks for itself.)

3 int. State why, in making this examination, you did not take into consideration the fact that the Ajax had been rebuilt in part from the Nile, as stated in your seventh cross-interrogatory.

110 Ans. I my examination I found her a good, staunch boat, and we took a risk on her in our own company, and considered her a good risk.

4 int. State to what extent you examined her timbers by the aid of a knife through her seams?

Ans. I tried pretty nearly all her timbers, both fore and aft and sides; I did not try them all.

5 int. How much lower than "A 2" do you class boats as fit to carry grain, and what are they?

Ans. One grade, "B 1;" that is, standard. "A 1," "A 2," and "B 1" are standard. There are three grades lower, B 2, C 1, and C 2; when they get as low as C 2, they are not considered fit to float.

6 int. You state, in your answer to 22 x-interrogatory, that, in examining this boat, you examined her as carefully as you would have done had you been buying her for yourself, because you were almost as much interested; state how you were interested.

Ans. I was employed by R. H. Jordan, the agent of the Lamar Insurance Company and the Buckeye Insurance Company, as their main inspector, and I would not have advised them to have taken it if I had not considered it a good risk, as they paid me a salary for my services.

111 *Re-cross-examination.*

1 x-int. Did you or not have a commission for taking a risk on the Ajax to the Buckeye Mutual Insurance Company; and, if so, how much?

Ans. I did not.

(Signed) D. CHAPMAN.

*Deposition of Ephraim Morrison.*

MAY 6, '67.

1st. int. What is your name, age, occupation, and place of residence?

Ans. My name is Ephraim Morrison; I am fifty-one years old; I am a boatman by trade, and have been since eighteen hundred forty-eight; I live in Chicago. I have been engaged in tow-boating since 1854, on the Illinois River, between La Salle and St. Louis generally; I am acquainted with the Illinois River in the neighborhood of Meredosia bridge; I have been acquainted with that bridge ever since it was put in; I

have been through this bridge a great many times; I was never through it at the very lowest stage of water, but at all other stages I was through that bridge. Going down the river, on the morning of the eleventh of March, 1866, the river was very high; I went through
112 there with eighteen boats, fifteen canal-boats and three barges, in tow of the steamboat Storm; we had a little difficulty of course in getting through, but a very little; with such large tows there is always a little difficulty; the difficulty there was that we held over to the right-hand shore, towards the abutment, a little too much, and when we come to back, we had not enough of steam to hold her back and prevent her drifting; we got a little more steam up and backed up and dropped through without any trouble; I never met with any damages there all the times I have been through this bridge. Some men, in going through this bridge, manage one way and some other ways, with different results; there has been boats sunk there, three or four to my knowledge; I never had no damage in that bridge, or any other, while in that river; I never damaged a boat; there are high winds and a current there, liable to drift a boat down on to the piling in the middle of the river, the same as on the Chicago River; I have been through there in all kinds of weather, night and day, when the current was prevailing, and have caught boats on those spiles, but got through without
113 doing any damage; a tow of eighteen boats would fill up the draw within eight or ten feet; the chances are very much greater of striking, under such circumstances, than with a small tow; a small tow is much less trouble.

2d. int. State whether or not, in your opinion, a collision occurring in the case of a steamer with one canal-boat lashed on the larboard side of the steamer, would be a collision which, happening early in March, 1866, would be inevitable and unavoidable by the use of proper care and diligence in making the passage through the bridge?

Ans. I should say, with my way of managing, a collision, under those circumstances, would arise wholly from negligence. Different pilots have different ways of managing; some go through with a good deal of head on, and some drop through slowly; in going through with a good deal of head on, if the boat should happen to sheer, a collision and loss is inevitable; my experience has been that most of the damage that has occurred at that bridge has happened when they were going through with a good deal of head on; sometimes the wind is the trouble, and sometimes it is the current. I know Frank Davis and John Dow-
114 ler as pilots on the river; Mr. Dowler has been in my employ; my opinion is that John Dowler, as a tow-boat pilot, is a No. 1 man.

*Cross-examination.*

1 x-int. Have you ever been employed as a pilot on the Illinois River; and, if so, how long?

Ans. I have never been a pilot.

2 x-int. How long have you been employed on steamboats running on the Illinois River, and in what capacity?

Ans. I commenced running in May, 1854, and have been running every season since up to last June 25th, 1866, with the exception of one season. I have always run as captain. They have been tow-boats.

3 x-int. Do you regard the fact of collision a certain evidence of negligence on the part of those managing the steamer or tow-boat?

Ans. No, sir; I couldn't.

4 x-int. Which, in your opinion, is most liable to be affected by winds and currents, or an ordinary tow-boat with a heavy tow in charge?

115 Ans. A passenger steamer.

5 x-int. State whether there has been, during your acquaintance with the business of towing on the Illinois River, a custom or usage which exempts steamers and tow-boats from liability from damage sustained by the boats in tow in colliding with bridges or other obstructions to navigation in that river? and, if you know of any custom or usage in respect to that, state what it is.

Ans. We have always claimed to pay no damage. A boat hitching on to us, we always told them we towed them at their own risk. I always, in my rules, kept that stuck up in the cabin publicly, where they could see it. That is the general usage of tow-boat men.

(Proctor for libellants objects to so much of the cross-examination as relates to the usage of towing, on the ground that it is on points not called for in the direct examination.)

*Re-examination.*

1 int. State whether or not, upon taking a canal-boat in tow, you stated to the captain of the canal-boat, on all occasions, this custom or usage.

116 Ans. Not at all times. It ran into a regular form or custom, understood to be so.

2 int. Understood by whom, and how do you know?

Ans. By the captain of the tow-boats. They knew it by a general custom.

3 int. Have you, in your experience, met with any little damage to canal-boats?

Ans. Yes, sir.

4 int. Have you or not, on such occasions, or some of them, made good those damages to the owner of captain?

Ans. I have frequently done it. I always notified that I done it for the sake of peace, and not that I was legally bound to do it.

(Signed) EPHRAIM MORRISON.

*Deposition of Michael Dempsey.*

MAR. 6, '67.

Int. 1st. What is your name, age, place of residence, and occupation?

Ans. My name is Michael Dempsey; age, 28; I reside in Chicago; am a canal-boatman.

Int. 2nd. State how you were employed in the winter of 1862 and spring of 1863.

117 Ans. I was employed in painting the canal-boat Ajax while she was being repaired. I was employed by the captain of the canal-boat. It was lying up the North Branch of the Chicago River, near the Erie-street bridge.

Int. 3d. State whether you know what was done with or to the Ajax at that time. If so, state fully in regard to it.

Ans. She was hauled up and cut down, and she had all new ribs put in her, except a few at the bow and stern. She had new futtocks put in her also. She had new deck and deck-frame; also new planking.

Int. 4th. You state that the ribs were new, except a few fore and aft. State what the condition of those few ribs was that were not new.

Ans. They are supposed to be sound when they left them there, and in some places the put new ribs alongside of the old ones, and left the old ones there.

5th int. State, if you know, what other portions of the Ajax that were not new at that time; and also, if you know, where the old portions of the material used came from.

Ans. They belonged to the boat, the canal-boat Nile. That was her name before she was rebuilt. The old floor-timbers were used,
118 and the old bottom; the old stern, and the old transom, and the few timbers fore and aft that I have spoken of before. By bottom, I mean the entire bottom, floor-timbers and plank. I think the old clamps were left in her.

6 int. State whether or not, in your opinion, the old timbers you speak of, with the new ones placed alongside, made the boat as staunch and strong as she would have been had only new timbers been used.

(Question objected to by Mr. Fuller as not having been shown as a proper matter of opinion, or that the witness is competent to judge.)

Ans. I think she was just as strong.

7th int. Are you now, and were you at that time, acquainted with the value of canal-boats? and, if you say yea, state what, in your opinion, was the value of the canal-boat Ajax at the time she was so rebuilt.

Ans. I am not very well posted on the value of canal-boats. I should think probably she was worth from $2,500 00 to $2,7000 00, to the best of my opinion.

*Cross-examination.*

1 x-int. What work did you perform on this canal-boat?

119 Ans. I was hired to help paint her, and to clean her out, and help run her when she was ready to go.

2 x-int. Are you a painter or carpenter by trade?

Ans. I am neither. I am a boatman.

3 x-int. Did you see any of the carpenter-work done on that boat that winter?

Ans. I did.

4 x-int. Did you examine and see for yourself the actual state of soundness of those parts of the canal-boat Nile which were used in building the canal-boat Ajax?

Ans. Yes, sir; I did.

5 x-int. What were you doing at the time they were rebuilding the boat?

Ans. A part of the time I was doing nothing, and the rest of the time walking around. I saw her before they put a plank on her.

6 x-int. Did you see the canal-boat Nile before she was cut down and rebuilt?

Ans. I did.

7 x-int. State what was her condition.

120 Ans. She was supposed to be in bad condition, and needed rebuilding. She was not fit to carry a cargo.

8 x-int. How old was she?

Ans. I don't know.

9 x-int. How long had you been acquainted with the canal-boat Nile?

Ans. About six or seven years.

10 x-int. Have you ever owned, or bought, or sold any canal-boats?

Ans. No, sir.

11 x-int. What has been your business in canal-boats, and for how long a time?

Ans. Steersman, for ten years.

12 x-int. In whose employment were you at the time you help to paint the canal-boat Ajax?

Ans. Captain Randolph.

13 x-int. In whose employment are you now?

Ans. I am doing nothing now.

14 x-int. When and by whom were you first asked to give your testimony in this case?

Ans. By Mr. Proudfoot, a few weeks ago.

121 15 x-int. Have you seen anybody else in regard to testifying in the case; if yea, whom?

Ans. I saw Captain Clark. It was a few weeks ago; the same time that I saw Proudfoot.

16 x-int. Did you at any time give an affidavit, or a written statement of what you would swear to?

Ans. I gave no written statement; I made a statement, and Mr. Proudfoot wrote it down, and I swore to it.

17 x-int. Did Mr. Clark at that time call your attention to the matters that you then swore to and have repeated here to-day, and have you seen that statement since?

Ans. He told me he wanted me to give my evidence in the case; I see it now; I have not read it since.

(Signed) MICHAEL DEMPSEY.

*Deposition of Peter Goulette.*

MAR. 6, '67.

Int. 1. What is your name, age, occupation, and place of residence?

Ans. My name is Peter Goulette; my age is thirty-four; I live in Chicago; I am a ship-carpenter and caulker.

122 2 int. State for how many years you have followed said business; and what branch of the business, if any, has been your particular business?

Ans. About fifteen years; my principal business has been ship-work in the first place; I have been working on building canal-boats for five years.

3 int. State if you know the canal-boat Ajax; and, if yea, the circumstances under which you know her.

Ans. I do know the canal-boat Ajax. I and Paul Pauliste got the job to put a new frame on the Nile. We commenced to work on her February four years ago, and got done in this month four years ago. We went to work and put a new side-frame on her, new fluttocks, and part of the cants were made new. There were old cants in the bow and stern, and we put new ones alongside of some of them, and new plank outside, a new deck-frame or beam, a new deck, new clamps, and new plank-shear, and caulked her all over, sides and bottom.

4 int. State how many of the old timbers of the Nile you used in building the Ajax.

Ans. I should say about half-dozen of pieces on each side in the 123 bow and stern, and we put new pieces alongside of the old ones. I did not keep an account of them, and cannot say exactly, but there were not that many in the stern.

5 int. State if you examined these old timbers before using them in building the Ajax. If so, what were their condition?

Ans. I did examine them before using them. I found those timbers,

by my judgment, by putting new pieces alongside of them to be good enough.

6 int. How were the other timbers that you put into the Ajax?

Ans. They were new, sound, and most all white oak. There may have been some planks of other oak; I could not tell.

7 int. What portions of the Nile, besides these timbers you have mentioned, did you use in building the Ajax, and what was their condition as to soundness?

Ans. The bottom was left; all the bottom plank. I can't remember whether we put any new plank around the knuckle or not. We used the old stern-post and the [and the stern post and the] inside ceiling, and the old cabin-house. I found the old bottom and floor good
124 enough, and sound. The bottom would have lasted a hundred years, and the stern-posts were good.

8 int. State whether or not, in your opinion, the placing of new timbers alongside of the old ones that you used served to make the boat stronger than she would have been had only new timbers been used in those places.

Ans. Yes; as long as they were double.

9 int. Do you know the value of canal-boats? and, if yea, state your means of information.

Ans. Yes; because I am doing nothing else but building and selling canal-boats.

10 int. State what, in your opinion, was the value of the Ajax at the time you so built her.

Ans. She could not be worth as much as a new boat, because there were some old timbers left in her bottom. In those days we could have got a new boat for $2,600 00 or $2,800 00. She was just as good as new to the owner to make money.

11 int. What would the same boat, the Ajax, have been worth in the spring of 1866?

(Question objected to by proctor for respondent.)

Ans. New boats were sold last year for $3,500 00 to $3,600 00.
125 It would have cost most double to build her last spring over what it cost four years ago. Labor and material were double.

12 int. State whether or not, in your experience as a canal-boat builder, and knowing as you do, the materials of which the Ajax was built, it would be possible for the timbers of the Ajax to become entirely rotten and useless in three years.

Ans. It can't be. You could not get them played out in three years. Some lumber will last four or five years and some ten years. She ought to have standed as well last year as when she first came out.

*Cross-examination.*

1 x-int. Did you have the contract for rebuilding the canal-boat Nile four years ago?

Ans. There were two ship-carpenters, who went afterwards to Michigan, who were employed by John P. Chapin to do this job—Frank Morisette and Joseph Pootrey were their names—and they did not have time to do the work. They were building a new boat, so they gave the job to me and Paul Polistte. We took a contract from those
126 two men. I was to be paid by these two men.

2 x-int. How were you to be paid?

Ans. So much for the whole job.

3 x-int. Were you to furnish the lumber?

Ans. No, sir.

3 x-int. How much were you paid for rebuilding the boat?

Ans. They got six hundred dollars for doing the work, and they gave us five hundred dollars for doing it. This was only for the work.

4 x-int. Did John P. Chapin ever make any complaint, to your knowledge, about the work, after it was completed?

Ans. Yes.

5 x-int. What was the nature of it?

Ans. She commenced to leak—she took a good deal of water—and the complaint, as I heard, was about caulking, and it might have been something else. They did not complain to me. They caulked the boat over on the sides and bottom.

6 x-int. Do you know whether the men who took the contract from John P. Chapin were paid for their work from time to time
127 as the work progressed, or not?

(Question objected to by proctor for libellants as immaterial.)

Ans. I guess they had some terms; I don't know, but I guess they got some down before the work was finished.

7 x-int. Did you put pine or oak plank on the sides of the boat?

Ans. Pine. Under the boat was all oak.

8 x-int. Were these pine plank new?

Ans. Yes, sir.

9 x-int. Was the stern of the old Nile, which you say was left in the Ajax, pieced or patched?

Ans. We left the stern-posts as it was.

10 x-int. Did you see the Ajax after she was launched?

Ans. Yes, sir.

11 x-int. What was done with her immediately after she was launched?

Ans. They loaded her, and then she leaked, and then they unloaded her and took her up to the yard to see what it was.

12 x-int. When you rebuilt her, did you put in new clamps?

128 Ans. Yes, sir; pine clamps over the old ones.

13 x-int. New bilge-clamps?

Ans. I did not.

14 x-int. Were there any bilge-clamps in the boat?

Ans. No; not that I know of. There was an oak stringer along the futtocks, but we did not put them in. I can't swear that there no bilge-clamps in her.

15 x-int. Were the knuckles bolted?

Ans. I guess they were not; I can't remember.

16 x-int. Was it not less work for you to put new timber alongside of the old ones in places than to take out the old and put in new entirely?

(Question objected to by proctor for libellants.)

Ans. Certainly.

17 x-int. Did you see the Ajax one year ago?

Ans. No, sir.

18 x-int. How many men did you employ in rebuilding her?

Ans. Three or four besides us two.

19 x-int. Do you mean, in answer to the 11th direct interrogatory, to swear positively that a boat's timbers could not, under any cir-
129 cumstances, become rotten in three years' time?

(Question objected to by proctor for libellants for the reason that the witness has not so sworn in his direct examination.)

Ans. It can't be—I don't believe be rotten in three years, in my judgment.

*Re-examination.*

1 int. State whether or not the building of the Ajax was superintended by any one. If so, by whom?

Ans. The captain and those two men were over us. I mean the two men who got the contract. What I had to do was to suit the captain; I think his name was Hindoff.

2 int. Is it an unusal thing for a canal-boat to leak on first being launched?

Ans. No, sir; it was probably from a spike-hole being left or not properly caulked.

3 int. Have you or not, in your experience, found that canal-boats, built entirely new, would sometimes leak on first being launched?

Ans. Certainly.

4 int. Do you know who were the owners, at that time, of the Ajax?

130 (Question objected to by proctor for the respondent.)

Ans. John P. Chapin and the captain, Hindoff.

*Re-cross-examination.*

1 x-int. Do you mean to be understood that new canal-boats are apt to leak, and have to be redocked and caulked all over on being first launched?

Ans. Yes; if there are any holes left, or is not well caulked. New canal-boats always leak; but after they get swelled up they get tight. If there is a bad hole left in the side, or is badly caulked, they will have to be redocked and recaulked. This is not a general thing.

2 x-int. Whose fault is it when a canal-boat, on being first launched, leaks so badly that she has to be taken to the yard or dock to be examined and repaired?

Ans. The fellow who builds her is in fault.

(Signed) PETER GOULETTE.

131 *Deposition of Paul Paulistte.*

MAR. 6, '67.

My name is Paul Paulistte; am 33 years old; and live in Chicago; I am a ship-carpenter and caulker; I worked in that trade for ten years; I have been building canal-boats for ten years; I began my trade on canal-boats; I know the canal-boat Ajax; I helped to rebuild her, about four years ago, from the Nile; I first began to plank her, when I went to work, and done the planking and the work on the deck—the deck-frame. The planking, and the deck and deck-frame, were new from the knuckle to the top or the shear-streak. We put new timbers, and new futtocks, and three or four new pieces, in the knuckle-streak, I guess it was; new clamp also. All the side-timbers, except the crooked timbers, called cants, were new; and we put new pieces alongside of the old cants that were left; for, though the old cants were good enough, we put pieces alongside to make it stronger. We examined the old timbers before using them, and found them good enough. We found out they were good by boring a hole through them, and found them sound. We used the old bottom of the Nile, and the old stern,

132 and the old stern-post, and the old floor-timbers. These were good enough, and sound—not sound like new. These cants form the shape of the bow and the stern, commencing about seven or eight

feet from the stem and stern, and between these cants it is straight. The new timbers we put in were oak; these new cants we put in extended from the deck down to the [deck, down to the] kelson; some did and some didn't. The inside lining was old; we put in new deck-clamps under the beam, on top of the old ones. The inside lining was good enough; we used pine lumber in making these clamps. When she was re-built I considered her a good boat. I know the value of boats. I have been engaged in building and selling boats. The Ajax at that time was worth about two thousand dollars. A boat like her, built last spring, would have been worth pretty near double; the material and labor were double. It can't be possible that the timbers we put into the Ajax would be rotten and useless in three years. Mr. Golette and myself are French Canadians, coming from Quebec.

*Cross-examination.*

133 I heard John P. Chapin and Co. made some complaints about the boat after it was built, but not to me. I heard the captain complain of the boat; he said after she was launched he began to load her, and she was leaking very bad, and he had to unload her and take her to the dry-dock. He said this to me. His name was Randolph or something like that. It took us about six weeks to rebuild her. The stern of the old Nile was not patched, nor was the stern-post. All of the new timbers we put in were oak; the side-planks were pine; the bent plank around the bow and stern were oak; there was some pine on the bow, but all oak on the stern. I can't say anything about the inside lining, whether it was sound or not; I had nothing to do with it; it was sound enough to hold spike. I can't say now whether the old timbers were perfectly sound that we took from the Nile; they were good enough to last three or four years. I don't know whether there were any bilge-clamps in the boat; I don't remember. I don't know whether the knuckles were bolted or not. We rebuilt the Nile five years ago this spring; I now remember it was four years ago. I do not think it would be possible for a boat's timbers to become rotten in three years
134 under any circumstances, if the timbers were new. A good new canal-boat may happen to leak when it is first launched, and have to go on the dock, but this is not the rule; it would be the fault of the caulker or the ship-builder if it did leak. An all new canal-boat last spring was worth between $3,500 00 and $3,600 00. I did not see the Ajax a year ago; I saw her a year ago last summer, but not since.

(Signed) PAUL PAULIST.

*Deposition of James Matthews.*

MAY 6, '67.

1st int. What is your name, age, occupation, and place of residence? Ans. My name is James Matthews; my age is about fifty; I am a ship and boat builder; I live in Chicago. I have been eighteen years in that business. I have built and repaired canal-boats for the last sixteen years. I did know the canal-boat Ajax. On June 20th, 1864, she first came to my dock for repairs. I think there was some bilge-plank put on the outside. She was there at my dock again on June 21st, 1865;
135 that time we put on $273 [dollars'] worth of work on her. The stern was damaged and broke into at this time, and very likely there was some caulking done on her. In October of the same year there was $9 80 worth of work on her. I don't know what was done. I have not seen her since.

2 int. State if, on these occasions, she was or was not thoroughly repaired, and state, if you know, what the condition of her timbers were at the time of such repairs.

Ans. She was thoroughly repaired as to what she wanted. We generally do what a boat requires. The timbers, as far as we saw, were sound; if they had not been we would have taken them out. There were no planks removed by us above the knuckle.

3 int. State whether or not, when a canal-boat is brought to your dock for repairs, you make a general examination and put in whatever is necessary in the way of repairs to make her sound and seaworthy.

Ans. Sometimes we do, and sometimes not; the general rule is that we do. I don't think that the Ajax was brought there either time for badness or rottenness, but on account of the breakage and the plank that was worn.

136 4-int. State what new canal-boats were worth in the spring of 1866; and how did prices of canal-boats at that time compare with their value in the spring of 1865?

(Question objected to by proctor for respondents.)

Ans. I built one in the winter of 1865, and sold her in May, 1866, for about $4,500 00. They were worth about $4,000 00. The prices in spring of 1866 were about double what they were in spring of 1863.

*Cross-examination.*

1 x-int. Did you examine thoroughly the timbers of the Ajax the different times you repaired her?

Ans. We could not see much of them to examine. We could see but very little of the timbers; I did not examine the timbers.

2 x-int. Do you know the value of canal-boats generally in the spring of 1866?

Ans. I know the value of my own boats. I do not know to a certainty the value of other boats; I supposed they were worth somewhere near my price. I have no actual knowledge as to the general value of canal-boats.

3 x-int. Is a canal-boat staunch without bilge-clamps?

Ans. I do not know what they are.

137 4 x-int. Is a canal-boat staunch without bilge kelsons?

Ans. I never built one without them; I never saw one without them, that I know of; the boat would be far better with than without them; the boat would be equally as sound, as to timbers, without them, but not as stiff.

5 x-int. Would a canal-boat be a serviceable without as with bilge-kelsons?

Ans. If I thought she would be as serviceable without as with them I would not put them in. The more you can put into a boat the more you will strengthen her.

6 x-int. At any time when you repaired the Ajax, did you put bilge-kelson or clamps in her?

Ans. I can't answer; I don't know. I presume the bilge-kelsons were in her when she came there. I never saw one without them. To the best of my opinion she had bilge-kelsons; if she had not we put them in.

7 x-int. Do you know whether she had bilge-kelsons?

Ans. To the best of my opinion she had. That is the only answer I can give. I cannot state positively whether she had them or not.

8 x-int. What parts of a canal-boat first decay?

138 Ans. Generally the top sides decay first; sometimes the floor-

timbers first. By top sides I mean the sides close to the deck; all that is above the water at low-water mark.

9 x-int. If a canal-boat has been damaged several times in the course of three years and repaired, would these damages and repairs add to her value?

Ans. I don't know what use there would be in putting them on if they did not add to their value.

10 x-int. Would these damages and repairs render the boat more [more] valuable than if she had never been damaged?

Ans. If an old boat two or three years old is damaged, and thoroughly repaired, it makes the boat better than she was. A new boat damaged, you cannot make her as good as a new one by repairs.

11 x-int. Could you ascertain the condition of a boat's timbers, without seeing them, in any way?

Ans. We could ascertain by hammering on the planks outside, if they were thoroughly rotten. If they had only commenced to decay you could not tell in this way. Were a person in doubt they sometimes bore in. The only true way to examine the timbers is to take off the plank, either inside or out; that is, the lining.

139 *Re-examination.*

5 int. What is the cost or value of bilge-kelsons?

Ans. The timber would cost from $25 00 to $35 00. It would cost altogether, in a new boat, from $60 00 to $75 00.

6 int. In your experience as a canal-boat builder and repairer, would you believe it possible that new timbers would in the space of three years become entirely rotten and useless?

(Question objected to by proctor for respondents.)

Ans. If the timbers were sound when they were put in, I think not.

*Re-cross-examination.*

1 x-int. Do you wish to be understood to swear positively that under no circumstances could new timbers in a canal-boat decay in three years' time?

Ans. No, sir; I won't swear no such thing.

*Re-examination.*

Int. State under what circumstances they might become decayed in three years.

140 (Question objected to by proctor for respondent.)

Ans. I don't think I can give you a better answer. If they were sound when they were put in I think they would not decay in three years. There is a difference in timber.

(Signed) JAMES MATTHEWS.

Deposition of Clark J. Morton, in behalf of libellants, taken before Henry S. Lasar, as special commissioner, at his office in the city of Saint Louis, Missouri, on the 24th day of August, A. D. 1867.

*Deposition of C. J. Morton.*

Int. 1. What is your name, age, place of residence, and occupation?

Answer. Clark J. Morton is my name; I am 35 years old; I reside in

St. Louis County; do the business of an insurance agent in the city of St. Louis.

Int. 2. What was your employment in the months of March and April, A. D. 1866?

Ans. I was an insurance agent and adjuster.

141 Int. 3. Are you acquainted with Captain Charles S. Ebaugh? and, if so, state the circumstances under which you made his acquaintance; and if you have had any business transactions with him, state what they were.

Answer. I am acquainted with Capt. Charles S. Ebaugh; I have known him since 1854, at least; seen him off and on; I have had no business direct with him, except as having travelled with him on his boat as passenger.

Int. 4. If you say that you have business transactions with him, and they related to the loss of the canal-boat Ajax and her cargo, state the circumstances attending your interest in said loss.

Answer. I never had any business transactions with Capt. Ebaugh relative to the loss of the canal-boat Ajax or it cargo. I was adjuster of that loss for the Home Insurance Company of New York.

Int. 5. State if any conversations occurred at any time, between you or (and) Charles S. Ebaugh in relation to the loss of the Ajax and her cargo; if so, when and where such conversation took place; state the circumstances under which they took place, and, as nearly as you can, state fully all that was said at the time of such conversations by yourself and Captain Charles S. Ebaugh.

142 Ans. Only one conversation took place between Captain Charles S. Ebaugh and myself relative to the loss of the canal-boat Ajax and her cargo; and it took place on board of the steamboat Admiral Farragut on a passage from Beardstown, Illinois, to this city, near the Meredosia bridge. Captain Ebaugh, in getting ready to pass, and after passing the bridge, and myself had a lengthy conversation on the loss of both boat and cargo. He said that he did, on the trip in which the Ajax was sunk, what he had never done before, and what he knew better than to have done then: that was to attempt the towing of a boat through the bridge with a full head of steam on; but he did not know why he attempted it then; that he deserved to be kicked for attempting it, or something to that effect; that his rule was invariably to drop the boats through. I do not remember what his language was, but he meant evidently to let the boats float through, simply using steam enough to steer them; that this was the only time he ever did differently, and the result was he had an accident. He said it was too bad that he had done such a thing, because it tarnished his reputation as a boatman, as a pilot. He said he had been for years steamboating, passing that

143 bridge day and night since it was built, and now his first accident came from his own carelessness. He talked in a similar strain to this for perhaps an hour. I was a long conversation. He seemed to care more about the accident resulting from his carelessness than from anything else. He felt that very keenly. As we passed through the bridge, or just before we passed through, he showed me about the position of the boat as he had started in, and attempted to explain to me how the canal-boat was struck. The particulars of his description I cannot remember. He said it was the quickest job he ever saw. That is the substance of the conversation.

Int. 6. State any other matter or thing, within your knowledge, of benefit to the libellants, touching the matter in controversy in this suit.

Ans. I do not know anything.

*Cross-examination.*

X-int. 1. If you state any conversation with Captain Charles S. Ebaugh, in answer to interrogatory 3d by libellants, please state where it took place, and who were present besides yourself and Capt. Ebaugh.

Ans. It took place as stated in my answer to interrogatory
144 5th by libellants, and there was nobody present except ourselves, of whom we took any cognizance.

X-int. 2. Were you, in April, 1866, an agent or an employee and any way of the Home Insurance Company of New York? Was you in any connected with any insurance company that was interested in the loss of the canal-boat Ajax, in April, 1866?

Answer. I was in April, 1866, an agent and adjuster of the Home Insurance Company of N. Y. I was connected with the said Home Insurance Company, whose policy covered nearly all the cargo.

X-int. 3. Were you present when the protest in relation to the loss of the Ajax was made out, or did you ever see it? Do you know whether Charles Clark, one of the libellants, made an affidavit (in connection with the protest) in relation to the loss of the Ajax? If you can produce a copy, attach the same to your deposition.

Answer. I was not present at the taking of the protest, but I think that I obtained a copy of it from the secretary of the board of underwriters. I do not remember that Charles Clark made an affidavit in connection with the protest in relation to the loss of the Ajax. I do not know in whose custody it is. I produce a copy of the pro-
145 test, which will be attached to these depositions, which I have secured from the notary before whom these depositions are taken, who says that the protest relative to the loss of the Ajax and cargo was taken before him.

X-int. 4. If you have stated that captain made any statements to you, conducing to show that there was any negligence on the part of the Admiral Farragut, her officers or crew, in the matter of the loss of the Ajax, state whether you communicated such statement to the officers of any insurance company; and, if not, why not?

Answer. In my general report to the said Home Insurance Company I undoubtedly state the facts which I have recited above, although I have no distinct recollection of it.

X-int. 5. When, where, and under what circumstances, and to whom, did you communicate your knowledge of the matters which you have testified in chief?

Ans. I have communicated my knowledge of the matters, as above testified, to the general company of the said Home Insurance Company located in this city.

X-int. 6. Was Captain Ebaugh, when making the statements you have testified, excited; and was he or not, as far as you could judge,
146 affected by a deep feeling of mortification; and was or not Captain Ebaugh's manner and tone such as to indicate that his language was colored by feeling and excitement?

Ans. Captain Ebaugh was no more excited at the time spoken of than any man would be relating such an accident. He was affected very much by a deep feeling of mortification. His manner and tone were not such as to indicate that his language was colored by feeling and excitement.

X-int. 7. Are you connected with, or do you own stock in, any insurance company that had a risk on the Ajax, or any part of her cargo, at the time of her loss?

Ans. I am connected with the Home Insurance Company as an agent, adjuster; but own no stock in it or any other company that had a risk on the Ajax, or any part of her cargo.

(Signed) CLARK J. MORTON.

*Copy.*

UNITED STATES OF AMERICA,
*State of Missouri, County of St. Louis, ss:*

By this public instrument of protest be it known and made manifest to all people that, on the ninth day of March, A. D. 1866, personally
147 appeared before Henry P. Lasar, a notary public, duly appointed and qualified, residing and practising at St. Louis, and State of Missouri, in the United States of America, Charles Clark, master of the late canal-boat called the Ajax, of the burthen of 100 tons, or thereabouts, belonging to Chicago, and makes, with due form of law, his protest, for the uses and purposes hereinafter mentioned; and, together with the said Charles Clark, also came Captain Charles S. Ebaugh, part owner and master, and pilot of the steamboat called the "Admiral Farragut," belonging to Beardstown, Illinois, and Frederick Nolte, part owner of, and employee on, the said "Admiral Farragut," all of whom, together with the said Charles Clark, being by me duly sworn on the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly do declare and depose as follows, to wit:

Charles Clark aforesaid declared that on the 7th day of March, A. D. 1866, the said canal-boat Ajax was lying at the Beardstown landing, at Beardstown, Illinois, laden with a cargo consisting of about 4,000 bushels of wheat, and about 1,500 bushels of oats, all of it included in
148 sacks, and about 350 bushels of corns in sacks, and on the said 7th day of March, 1866, was taken in tow by the said steamboat Admiral Farragut, Captain Ebaugh. From Beardstown said canal-boat Ajax, being in tow by the said steamboat Admiral Farragut, proceeded on to Meredosia landing, and while making her entrance through the bridge near the Meredosia landing, called the Meredosia railroad bridge, the said steamboat Admiral Farragut got the advantage of the pilot of the said steamboat Admiral Farragut so as to flank the said canal-boat Ajax and the said steamboat Admiral Farragut against the pier or buttment of the said Meredosia bridge, when she struck so hard against said pier or butment as to crush her larboard stern quarter in such a manner as to part all the lines, and to sink said canal-boat Ajax within five minutes. She, the said canal-boat Ajax, sank at once entirely out of sight, beyond all efforts of rescuing or saving either the said canal-boat Ajax or its cargo wherewith it was laden.

Charles S. Ebaugh, aforesaid, declared that on the 7th day of March A. D. 1866, he, as master pilot and part owner of the said steamboat Admiral Farragut, took in tow the aforesaid canal-boat Ajax, to bring her down to the city of St. Louis, Missouri. She was laden with
149 grain. When rounding out from the upper Meredosia landing, we headed down towards the open space in the said Meredosia bridge under the draw; the said steamboat Admiral Farragut, with the said canal-boat Ajax in tow, flanked in against the east pier or spiling of the draw, whereby the said canal-boat Ajax struck against said pier, causing her, the said canal-boat Ajax, immediately to sink out of sight; and it was impossible to rescue or save either the said canal-boat Ajax or its cargo; and the said appearant, Charles S. Ebaugh, further declares

that he, together with his crew, tried to hold on to the tow-lines of the said canal-boat Ajax in order to tow her to the shore; but she parted all the lines.

Frederick Nolte, part owner and employee on the said steamboat Admiral Farragut, declared that he fully, entirely, and perfectly coincides with the statement of Charles S. Ebaugh aforesaid, and every particular and detail of the same, in regard to the accident and loss of the said canal-boat Ajax, and its cargo; and these said appears, Charles Clark, Charles S. Ebaugh, and Frederick Nolte, and I, the said notary, do also protest against the aforesaid bad weather, storms, snags, explosions, fires, accidents, and occurrences, and against all loss and damages
150 occasioned thereby.

We, Charles Clark, Charles S. Ebaugh, and Frederick Nolte, do solemnly swear that the foregoing statement is correct, and contains a true account of the facts and circumstances, to the best of our knowledge.

(Sig.) CHARLES CLARK.
(Sig.) CHARLES S. EBAUGH.
(Sig.) FREDERICK NOLTE.

Thus declared and protested, in due form of law, in the city of St. Louis, county of St. Louis, and State of Missouri, this 9th day of March, A. D. 1866.

[NOTARIAL SEAL.] (Sig.) HENRY S. LASAR,
*Notary Public.*

Depositions of Christian F. Niemann, Charles S. Ebaugh, Charles Henry Ebaugh, David H. Lollis, John L. Pike, Joseph Bolejack, John Frederick Nolte, George W. Meeteer, Charles W. H. Clark, John L. Dowler, Thomas H. Wills, Francis M. Davis, John R. Dutch, George L. Day, and John Harper, and the cross-examination of Charles Clark,
151 in behalf of respondents, taken before Henry Philips, special commissioner, at his office in the city of Beardstown, Illinois, on the 22nd, 23d, 24th, 28th, 29th, 30, and 31st days of January, and the 1st, 2nd, and 4th days of February, A. D. 1867.

*Deposition of Christian F. Neiman.*

JAN. 22, '67.

Inter. 1. What is your name, age, residence, and occupation?

Ans. My name is Christian Frederick Neiman; I will be 35 years of age in April next; I reside in Beardstown, Cass County, Illinois; I am mate of a steamboat.

Inter. 2nd. What occupation were you engaged in in the month of March, A. D. 1866?

Ans. I was employed as mate on the steamboat "Admiral Farragut."

Inter. 3d. Who was the master of the "Admiral Farragut" at that time?

Ans. Charles S. Ebaugh.

Inter. 4th. During the months of March, 1866, were you or not acquainted with Charles Clark? and, if yea, state what was his oc-
152 cupation, and under what circumstances did you become acquainted with him.

Ans. I was acquainted with him in the months of March, 1866; he was captain of a canal-boat; I got acquainted with him in March, 1866, towing a canal-boat of which he was captain, and which was towed by the steamer "Admiral Farragut," of which I was mate.

that Mr. Quigg was on board until after he was drowned. The stern of the canal-boat struck a piece of square timber, which is bolted or fastened to the piles upon which the end of the bridge rests when the bridge is opened. This timber appeared to be from 8 inches to a foot thick. I never measured it. The canal-boat was struck within twenty feet from the stern. She began to sink stern first. To the best of my recollection she floated down the channel of the river through the bridge in a sinking condition, and sunk 3 or 4 hundred yards below the

that he, together with his crew, tried to hold on to the tow-lines of the said canal-boat Ajax in order to tow her to the shore; but she parted all the lines.

Frederick Nolte, part owner and employee on the said steamboat Admiral Farragut, declared that he fully, entirely, and perfectly coincides with the statement of Charles S. Ebaugh aforesaid, and every particular and detail of the same, in regard to the accident and loss of the said canal-boat Ajax, and its cargo; and these said appears, Charles Clark, Charles S. Ebaugh, and Frederick Nolte, and I, the said notary, do also protest against the aforesaid bad weather, storms, snags, explosions, fires, accidents, and occurrences, and against all loss and damages
150 occasioned thereby.

We, Charles Clark, Charles S. Ebaugh, and Frederick Nolte, do solemnly swear that the foregoing statement is correct, and contains a true account of the facts and circumstances, to the best of our knowledge.

(Sig.) CHARLES CLARK.
(Sig.) CHARLES S. EBAUGH.
(Sig.) FREDERICK NOLTE.

Thus declared and protested, in due form of law, in the city of St. Louis, county of St. Louis, and State of Missouri, this 9th day of March, A. D. 1866.

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*Deposition of Christian F. Neiman.*

JAN. 22, '67.

Inter. 1. What is your name, age, residence, and occupation?

Ans. My name is Christian Frederick Neiman; I will be 35 years of age in April next; I reside in Beardstown, Cass County, Illinois; I am mate of a steamboat.

Inter. 2nd. What occupation were you engaged in in the month of March, A. D. 1866?

Ans. I was employed as mate on the steamboat "Admiral Farragut."

Inter. 3d. Who was the master of the "Admiral Farragut" at that time?

Ans. Charles S. Ebaugh.

Inter. 4th. During the months of March, 1866, were you or not acquainted with Charles Clark? and, if yea, state what was his oc-
152 cupation, and under what circumstances did you become acquainted with him.

Ans. I was acquainted with him in the months of March, 1866; he was captain of a canal-boat; I got acquainted with him in March, 1866, towing a canal-boat of which he was captain, and which was towed by the steamer "Admiral Farragut," of which I was mate.

Inter. 5. At what point was Captain Clark's canal-boat taken in tow by the "Admiral Farragut?"

Ans. At Beardstown, Cass County, Illinois.

Int. 6. In what manner was said canal-boat lashed to the said steamer, "Admiral Farragut," when she started from Beardstown?

Ans. The canal-boat was lashed to the steamboat by two head-lines, a tow-line, and stern-line.

Int. 7. Were these lines sufficient to securely attach the said canal-boat to the said steamer?

Ans. They were the same lines used for towing barges, and were sufficient for the purpose of towing the canal-boat.

Inter. 8. State any particulars that may be in your recollection concerning the trip from Beardstown to Meredosia.

Ans. Both the steamer and the canal-boat were well handled,
153, 154 and no accident happened. We made two landings at La Grange on our way down.

JAN. 23, '67.

Inter. 9. State any facts within your knowledge in regard to the trip of the "Admiral Farragut" and the canal-boat "Ajax" from Beardstown to Meredosia bridge.

Ans. We left Beardstown in the afternoon, and nothing of importance occurred until we reached Meredosia landing. The landings made were sufficient to test the strength of the lines, and the fact that the canal-boat was securely lashed to the steamer. We landed at what is called the "upper dock" in Meredosia.

(The witness here produces a diagram marked "A A."

Here follows map marked page 2, 154.)

I consider this as a correct diagram of the river in the vicinity of Meredosia bridge. The dock marked on diagram as "C" is the upper dock above named. This was the third landing we made from Beardstown. We took on more freight at this landing. It was about half past three o'clock in the morning when we left this dock. We left the dock and went across the river above the wreck of the Martha. We went to about the middle of the river, and headed her for the bridge.

She went in the usual course, and everything appeared to be go-
155 ing right until we got between the pier and piling of the bridge. The bows of the boat were about in the bridge. At that time the stern of the boat flanked around, and struck the piles in the middle of the river upon which the bridge swings. The occasion of this flanking of the boat was, to my knowledge, the high water. During high water the bank "A" is overflowed as far back as the dam marked "B" in diagram, which, at high water, causes a current to run diagonally across the bridge from "D" to "D" on diagram. I think I was Mr. Clark on the canal-boat at the time of the collision, about one-third of the way from the stern of the canal-boat. I saw three men standing there. Mr. J. F. Nolte was one of the other men, and the man who was drowned was the other. Mr. Quigg was the man drowned, but I did not know that Mr. Quigg was on board until after he was drowned. The stern of the canal-boat struck a piece of square timber, which is bolted or fastened to the piles upon which the end of the bridge rests when the bridge is opened. This timber appeared to be from 8 inches to a foot thick. I never measured it. The canal-boat was struck within twenty feet from the stern. She began to sink stern first. To the best of my recollection she

floated down the channel of the river through the bridge in a
156 sinking condition, and sunk 3 or 4 hundred yards below the

lowest piling of the bridge. I don't think the steamer had steam on after she struck. I don't think that immediately before the collision the steamer was going at anything more than an ordinary rate of speed. The steamer went into the bridge in proper shape. At the time of the collision the canal-boat was properly attached to the steamer, as before described. I did not see any lack of care or skill on the part of any of the officers or crew of the steamer. At the time of the collision I was standing forward of the pilot-house, on the larboard side, on the hurricane-roof of the steamer that the canal-boat was lashed to. It was a moonlight night, but at the time of the accident the moon was about going down. Captain Ebaugh was in the pilot-house at the time. I saw no other person in the pilot-house at the time. I have known Captain Ebaugh as a river-man during the last twelve years. I have been with him on this steamboat two years, and on the "Prairie State," and also on the "Progress." I have been with him altogether on steamboats about two years and a half. He has been captain and
157 pilot. Since I have known Captain Ebaugh he has been a sober, careful, and skillful man, and is so considered by all those who know him. He is considered one of the best pilots we have on the Illinois River. He always takes the wheel himself when on watch, in passing through the bridge at Meredosia. He had no other pilot but himself on board at the time of the collision. I never new him let his son Henry take the wheel going down through the bridge. I heard Mr. Clark, the libellant, say that the sinking of the canal-boat was an accident, and could not be helped. He had no doubt in the world but that everybody had done their duty. I have had frequent talks with Mr. Clark, and have never heard him charge any one with neglect of duty on the "Farragut" at that time. At the time of the collision I was mate on the steamer "Farragut," and was on watch at the time. I know that other boats have been sunk and wrecked at the Meredosia bridge, but know nothing personally of the circumstances of the wrecking. About two years ago the "Farragut" had a barge in tow, and in going down we struck the bridge, damaging the barge slightly. The barge spoken of belonged to the "Farragut." The stage of water at the time was ordinary, neither high nor low. I do not recollect the cir-
158 cumstances under which we struck the bridge at that time, except it was on the down trip. I do not recollect how we approached the bridge at the time we struck the barge. The piles were strengthened the winter preceding the trip of the "Farragut" when the canal-boat was sunk, by braces on the inside of the piles, and by a piece of square timber fastened on the outside of the piles near the water. I do not know when the square timber was placed [was placed] on the piles. It looked to me like a piece of new timber, but don't know whether it was new or not. With a canal-boat in tow, the ordinary speed of the "Farragut" would [would] be 7 or 8 miles an hour, to the best of my knowledge.

*Cross-examined.*

Names of officers and crew of the "Farragut:" Captain, Charles S. Ebaugh; carpenter, John F. Nolte; 1st mate, Christian Frederick Neiman; no second mate; watchman, James Purdum; engineers, 1st, Joe Boly Jack, 2d, W'm De Haven; deck-hand, Jack O'Neal and Edward Meyers, and eight or ten others, whose names I don't now recollect. I don't
159 recollect that there were any other persons on board the "Farragut" besides the captain, officers, and crew. Captain Ebaugh's son

Henry was on board; he was steersman. The two watches were taken by Captain Ebaugh and myself. The captain always stands on the down watch. I don't recollect what men composed my watch. The general rule is that one-half the crew are on watch at a time. All the crew were up at the time the collision occurred. I was on the hurricane roof, and could not see whether the men were on deck or not. To the best of my knowledge, all the crew were up, because we had just left the dock, where we had taken on freight. I stated to Captain Clark, or some other person, that "I told the men that they could all turn in after they were through with the freight pile; that it was a thing I had never done before." Sometimes I allow the men to turn in after they have been up a good while. I do not recollect whether on the night of the collision we had a special look-out. To the best of my knowledge, the pilot-house is situated about fifty feet aft of the stern of the steamer, on the hurricane-deck. It was my watch at the time of the accident. To the best
160 of my recollection the canal-boat was lashed on the larboard side of the steamer with her bow about even with that of the "Farragut." The stern of the canal-boat was a little more than half-way down the length of the steamer. To the best of my knowledge, the breadth of the steamer, guards and all, is about thirty-six feet. The canal-boat was lashed to the bow of the steamer by two head-lines attached to the bow of the canal-boat. These two lines were inch-and-a-half lines in diameter. The lines were not new, but, so far as I know, were good and strong. The tow-line was made fast to the ring-bolt on the canal-boat. The ring-boat is back of the cabin of the canal-boat. This line was made fast to a cavil, forward on the steamer. This line was also an inch-and-a-half line. The stern-line was fastened to the stern of the canal-boat, and to the stern of the steamer. This line was an inch and a quarter in diameter. When the collision occurred the canal-boat broke loose from the steamer; all the lines were broken, except one of the head-lines. The dock, marked "C" on diagram, is quarter of a mile, more or less, above the bridge. I do not know who drew the diagram attached
161 to this deposition, marked "A A." I did not personally examine the bank of the river, marked "A" on the diagram, at the time of the collision. At different times during that spring I have noticed a current there during high water. When we left dock "C" I was busy on the steamer, engaged with something. Immediately after we left the dock I went on the hurricane-roof; it may have been three, four, or five minutes. When I got up there the steamer was heading for the bridge; she was a third or fourth the width of the river from the west bank. When I first went on the hurricane-deck I went to the larboard side, and stood there and watched manœuvres until the accident happened. I saw that a collision must occur when the boat commenced swinging; it was only a few minutes before the boat struck. To the best of my knowledge, it was from one to two minutes. I told the pilot when she commenced swinging she was going to strike the piling of the bridge; the pilot made no reply. It was done about that time; there was not much time between it. Captain Ebaugh was in the pilot-house; I did not look whether he had the wheel or not. I did not see any one else in there. I saw him standing on the larboard side of the wheel. I did not look to see if there was any one else there. I do not know where
162 Henry Ebaugh was at this time; he was not in the pilot-house, that I know of. I did not look to see if Captain Ebaugh was in the pilot-house when I first went up on the hurricane-deck. I do not know where Captain Ebaugh was when we were at the Meredosia landing; I don't recollect that I saw him at all. Henry Ebaugh steered the

steamer sometimes. I never acted as pilot on the Illinois River. The conversation referred to, between Captain Clark and myself, to the best of my recollection, occurred on the day following the collision; it was on the "Farragut." I do not recollect if any one else was present. To the best of my recollection, he used the words as I have stated them. The frequent conversations referred to all occurred on the "Farragut" during the two or three days after the collision. He went with us to St. Louis, and we brought him back to Beardstown. I have passed down through the Meredosia bridge fifty times during the year 1866. The water was never so high during that time as it was on that occasion of the collision. We had high water in the spring of 1865. The current is stronger in high water at the bridge than it is at the ordinary stage
I have had trouble before on some occasions in going through
163 the bridge, and have been obliged to back up the steamer in order to get into shape to go through without colliding. I picked up Captain Clark's wife from off a feather-bed in the river; Captain Clark got hold of the yawl-boat.

*Re-direct examination.*

I mean, when I said I told all the men to turn in, all those called roustabouts, as distinguished from proper deck-hands. The employment of the roustabout is to carry freight off and on the boat, while the deck-hands stow the freight and handle lines. I do not know whether the men did turn in or not before the collision. I know that one of the deck-hands did not turn in, because he went with me in the yawl to save Mrs. Clark.

(Signed) C. F. NIEMANN.

*Deposition of Charles S. Ebaugh.*

JAN. 23, '67.

My name is Charles S. Ebaugh; am forty-three years of age
164 next April; reside in Beardstown, Cass County, Illinois; am one of the claimants in this suit, and was captain of the steamer "Admiral Farragut" in the month of March, A. D. 1866. I made a contract with Captain Charles Clark, one of the libellants, at Beardstown, in the forenoon of the 7th day of March, 1866. I agreed to tow the canal-boat "Ajax" from Beardstown to St. Louis, for the sum of sixty-five dollars, and, if the canal-boat was ready to come back when the Farragut was ready to return, and Captain Clark wished to return with the "Farragut," I would tow the canal-boat back from St. Louis to Beardstown for the sum of sixty-five dollars; but no definite arrangement was made as to towing the canal-boat back to Beardstown, and I suggested to Captain Clark that he might be able to get towed back for a less sum, and I would not agree to wait for him if he was not ready. The "Farragut" was built with a view to use her for the purpose of towing or freighting. She was light draught, about 22 inches, when light; could be loaded to about five feet. She came out on the 29th October, 1864. I built her myself, for my own use. I can't say that
I ever used her for towing much, except for myself, but we have
165 done one trip of heavy towage to New Orleans. She was a stern-wheel boat; she was one hundred and sixty feet in length, exclusive of wheel. The wheel would add about seventeen feet to the length. The canal-boat was lashed to the steamer, on the larboard side, in the usual way. The canal-boat was lashed to the steamer under my direc-

tion, but Captain Clark interested himself and gave some direction himself as to the lashing of the boat. When the canal-boat was lashed to the steamer the bow of the canal-boat was a little ahead of the bow of the steamer, and was so at the time of the collision. The canal-boat was attached in the usual manner as to position.

(The diagram marked "A A," spoken of by the witness Nieman, is here shown to the witness Ebaugh.)

The diagram shows correctly the position of the bridge at Meredosia, the general direction of the river above and below the bridge, and the position of the dock at Meredosia. Commencing about one-quarter of a mile above the bridge, at the place marked "point" on the diagram, the channel runs close along the west bank of the river, and from that point it gradually diverges, almost in a true circle, until it passes straight and fair through the draw of the bridge, continuing the circle
166 until it comes nearly to the west shore, about two hundred yards below the bridge, at about five feet of water in the channel, and from that down to the lowest stage of the water. I have never discovered any diagonal current, to my knowledge. From about five feet of water up to the highest stage of water, the diagonal current increases in speed, according to the height of the water. This increase of current depends, though, upon certain circumstances. The diagonal current of which I speak changes its direction according [according] to the heigth of the water, and other circumstances. The line marked "D D" in the diagram indicates the direction of the diagonal current I have spoken of at the time of the collision. One of the modifying circumstances affecting the speed of this diagonal current is dependent upon whether the rise in the river is produced mostly, or in a measure, from a rise above. When it is from above, this diagonal current is increased in speed and power. When the river rises at the bridge, or along the whole course of the river, from local rains, the speed and power of this diagonal current is less. To so great a degree is this true, that, in the year 1844,
167 when the river rose from water backed up from the Mississippi River, there was no current at all at Meredosia. Another circumstance affecting this diagonal current is the dam marked "B" on the diagram, created by the railroad embankment; that this embankment, being more or less a dam, throws back the water, and increases, more or less, this diagonal current.

JAN. 24, '67.

I am able, as I approach the bridge, to discover whether the circumstances heretofore spoken of are in existence. But there were two other circumstances existing at the bridge, on the opening of navigation in the spring of 1866, with which I was not previously acquainted, one of which was the diagonal bracing or stiffening of the piling, at the upper end of which the draw of the bridge rests upon when open; the other was the accelerated or increased speed of the diagonal current, which was greater on that occasion than at any other previous time in my experience. The piling of which I speak commences from a point on a line with the middle of the centre or middle abutment upon which the bridge rests, and extends above the bridge, or up the river to the extent of about one hundred and fifty-six feet, and also the same distance
168 below the bridge, or down the river. This piling is driven in two rows, one on each side of the abutment, converging to a point at each end. The danger of injury by striking these piles is much greater since the stiffening of the piles, as above described, than it was before they were so stiffened, for the reason that, before they were so stiffened,

they would yield to the blow or pressure; but since they were so stiffened, they will not give, but are solid. These piles are stiffened by diagonal braces, running from side to side, enclosed in a square framework attached to the piles, and by a piece of square timber reaching the whole length of the upper piling, fastened on the outside of the piles. This timber is about one foot square, and was put on, I think, in the fall of 1865, and, to the best of my recollection, was at the time of the collision about one foot under water, leaving the upper surface of the timber about even with the surface of the water. I have been a pilot on the Illinois River about eighteen years, and have been a licensed pilot under the laws of Congress about eleven years. I was a licensed pilot on the eighth of March, 1866. During the 18 years spoken of, I have been every year on the river, except the year 1863, when
169 from the spring until August of that year I was off the river.

(A diagram, marked "B B," is here shown to the witness, which is attached to, and becomes a part of, this deposition.)

When we left the upper dock at Meredosia we pursued a course, marked on the diagram "B B," by a line as "Course of the Farragut when leaving the dock," until the boat came to within fifty or one hundred feet of the west bank of the river, a little below the place marked on the diagram "B B" as "point," when, finding she would not make the circuit in coming around, and to avoid striking the bank, I commenced backing from the point marked "A" on diagram; not being able to make the circuit and come around, the boat was backed from point "A." Had I not backed the boat would have run me ashore. When the effort was made to back the boat, the forces affecting her were the headway and the current, and especially the effect of the tow on the boat, there being a tow one [one] side only of the "Farragut." Under the influence of these forces the stern swung around, the boat still drifting, until she was in position marked "No. 2" on the diagram, when she first commenced actually to back. The backing still
170 continued, the stern still swinging up the river until the boat assumed the position marked as position No. three on the diagram, when she started ahead. When I had first started out from the dock, my plan was to round, making a circuit, and follow the course indicated by the dotted line designated on diagram "B B" as "Course intended to be pursued by pilot;" and when I again started from position No. 3 I still intended to take the same course, making the same circuit. In going ahead from position No. 3, before she attained sufficient steerage-way to check her, the boat came into position No. 4, when the engines were stopped in order to let the steerage way and headway of the canal-boat swing the boat the other way. By stopping the engines the headway of the canal-boat had a tendency to swing the boat around into proper position. The boat then came into position designated as No. 5. At this point of time, when the boat was in position No. 5, I started the engines ahead again. The flanking of the boat was now, by the force of the current and the influence of the tow on the boat, more than the headway. At this time the headway of the boat was not more than one and one-half miles per hour as the engines started.
171 When the engines started the head of the boat swung to the larboard somewhat, and then we came ahead strong on the engines, with a view of getting sufficient headway on the boat to keep her in the middle of the passage-way through the bridge. The boat continued to flank very fast until she came into collision with the piling of the bridge, as shown in position marked "No. 6" on diagram; the larboard quarter of the stern of the canal-boat first striking, and immediately the fan-

tail of the steamer striking the piling. The canal-boat sunk, should think, in about five minutes. When the canal-boat struck, her stern began to sink. After the water fell in June or July, 1866, I examined the canal-boat. There was then about two feet of water. The stern of the canal-boat was very rotten, and where she was broken at the stern we found that, previous to her sinking, there had been some new timbers put in, and old ones left in; the old ones were more or less rotten. I was myself at the wheel at the time of the disaster. I landed the boat myself, and had the wheel from the time the boat left the dock at Meredosia. I first discovered that the boat would probably rub when
172 the head of the steamboat was about opposite the head of the upper end of the piling of the pier on the west side of the river. When I was in position No. 5 I had no doubt whatever that I could make the passage safely with the tow. I judged that I could get headway enough to accomplish this; but I could not do so, though we had plenty of steam to counteract the effect of the diagonal current, and so she struck. I could not get the canal-boat ashore, because I tried, and she sunk too soon, and all the lines parted except one head-line.

Int. 1. State whether or not on the Illinois and Mississippi Rivers there is any usage or custom as to the liability of a steamboat on a verbal contract to tow a canal-boat or barge in the absence of a special agreement; and, if so, what is the custom or usage?

(Question objected to by proctor on part of libellants.)

Ans. I will only say this far: that the custom is for owners of canal-boats to take their own risk in verbal agreements for towing, allowing for due diligence and ordinary care on the part of the officers or managers and pilot of the steamboat so towing. To my knowledge, there are no written contracts ever made between steamboats and canal-
173 boats for towing on the Illinois and Mississippi Rivers.

Int. 2. Under the circumstances stated in the foregoing interrogatory, is there any usage or custom on said rivers, as to who takes what are denominated as the usual hazards & perils of river navigation?

(Question objected to by the proctor on the part of the libellants.)

Ans. There is such usage and custom; the hazards and perils of river navigation on the rivers spoken of are always taken by the parties being towed, subject to the conditions mentioned in my answer to the foregoing interrogatory.

Inter. 3. State whether or not the loss of the canal-boat "Ajax" under the circumstances hereinbefore detailed in your deposition was within what are understood by navigators as the usual and ordinary perils and hazards of river navigation.

(Interrogatory objected to on the part of the libellants, for the reason that it involves questions of law, not within the understanding of navigators generally, nor of the witness.)

Answer. I should say it was.

Witness knows that six boats were sunk at the Meredosia bridge
174 last spring, within not over two months. These boats were sunk during the stage of water similar to that existing when the canal-boat "Ajax" was sunk, five of which were sunk after the "Ajax." The steamer "Schuyler" sunk a barge immediately after, under similar circumstances of water and current. Upon reflection, I am not certain whether this was 1865 or 1866. The "Tiger" had five or six boats in tow, and sunk one of them in the same manner. I don't know how the "Tiger" towed these boats, but they usually have one on each side, and the rest out ahead. I will not be positive whether it was the steamer

"Storm" which sunk two ice-boats there afterward. The sides were torn out of them, but they did not sink, on account of their being loaded with ice, which caused them to float. I understood the last accident happened under the same circumstances. The other way a hay-boat in tow of the "Sam'l Clark." The boat sunk, but still floated. I understood this happened in the same manner, and under same circumstances. All the above accidents happened under the same condition of water. In the spring of 1863 the "Adelia" sunk two canal-boats at the bridge
175 under the same circumstances of water and current. I was standing looking at them. She had 3 or 4 and perhaps 5 boats in tow. In the spring of 1862 the "Polar Star" sunk a large barge at the same place under same circumstances. Some time in April, 1863, a canal-boat, commanded by Captain Whaling, was sunk there. She was in tow of a steamer. I do not know the facts in regard to the accident. I was at Meredosia a good deal, doing business there, until the spring of 1865, from the time the bridge was built, and I know personally of a good many other accidents of similar character. The names of the boats sunk I do not now remember, neither do I know now the different circumstances. Previous to the time spoken of above, I resided at Meredosia for about seven years, and by personal observation and experience I acquired a knowledge of the currents, shoals, bars, channels, stages of water, and all the various peculiarities of the harber at that place and vicinity, superior to any information that could possibly be obtained from the business of a pilot on the river. Captain Clark, the libellant, came up into the pilot-house immediately after the sinking of the canal-boat "Ajax," I think he had not yet dried his clothes,
176 and said to me, "The damned old thing has gone at last. This is the third time since I've owned her that she has been stove by hitting bridges, and twice sunk; and I hope I'll never see her again." I then asked him if Quigg was safe. He said he did not know whether he had got on the steamboat or not. The only two things he was really sorry for was losing the freight on his trip, and if Mr. Quigg was drowned. That the boat was insured for fifteen hundred dollars, and he thought that was fully her value. I did not want to converse with any one. I was feeling badly on account of the accident; I remarked that, I only hoped an earthquake or something else would swallow up the damned bridge; it had been a steamboat trap or dead-fall ever since it was built. "I suppose, however, I ought to be made to pay all damages I sustained by it, for ever helping to build it." Mr. Clark said, "You should have nothing on your conscience for sinking that boat. It was not your fault. I never seen a boat with tows come into the bridge in any better shape or any prettier in my life." I remarked to him, I had failed in my original plan of running out around and coming in
177 the bridge straight with the current and backing up, and by that means was compelled to do one of two things; with every probability of saving the boat if I went ahead, but of certainly sinking her if I backed her. Mr. Clark then remarked that it was not my fault, (meaning witness;) that if ever there was an accident this was one. My son Henry was present during the conversation, but am not positive whether any one else was present. During the winter of 1862 and '3, application was made to me to load the canal-boat "Ajax." She was then lying at Meredosia. The captain of the Ajax at that time told me that she was rated in Chicago as No. 1, but that he did not have the certificate. I did not like the looks of her; and I telegraphed to Chicago to know if she was insurable, and learning that she was not, I declined loading her. Captain Clark, after the collision, went down to St. Louis

on the "Admiral Farragut," and entered a protest, in which he stated the circumstances of the loss, and to which he made affidavit.

178 *Cross-examination.*

List of officers and crew of Admiral Farragut: Charles S. Ebaugh, captain and pilot; Fred. Nieman, mate; Jos. Boly Jack, 1st engineer; Fred. Nolte, carpenter; James Purdum, watchman; Jack O'Neal, deck-hand. The other deck-hand I do not recollect. There was not less than six roustabouts. My impression was that there were 8 or 10 of them. I do not recollect their names. There were two firemen; one was George Schaefer, and the other I do not recollect his name.

(Proctor for the libellant here requests a list of the names of the officers and crew, which the witness agrees to furnish.)

My son was on board, and was allowed to steer only in fair sailing. He steered part of the way from Beardstown to Meredosia on this trip. The "Farragut" has been engaged, since she has been running on the Illinois River, in carrying passengers, freight, and towing. We tow our own barges, or any other boats that offer towage to us. I drew the most of the diagram marked "A A," attached to the deposition of Frederick Neiman. It was not from actual survey, but from my own recollection and knowledge of the river and locality. The dotted lines on the
179 plat marked "A A," which are designated as the current at high water, are not intended to convey the idea that the current in high water only runs as such lines indicate. It is not intended to convey the idea that at high water the current runs only across the west bank, but it runs down the bed of the river diagonally through the bridge. The different points designated on the plat "A A," and also on the plat "B B," are not laid down on the plats by survey and measurement, but at the period where my knowledge of the locality would place them. The water was about 12 or 13 feet deep in the channel at this time. There would be on the edge of the west bank at the "Point" about 2½ feet. And farther down, nearer the bridge, some six or seven feet. And back from the bank, from half to three-fourths mile, the ground being lower, and a sort of lake, there would be ten or twelve feet. Over the wreck of the "Martha" there would be from eight to nine feet, probably more; when the water is thirteen feet in the channel, the "Admiral Farragut" when loaded, at such a stage of water, could run over the
180 wreck of the "Martha" without striking.

X-int. 1. Is this theory of yours, so fully set forth, in reference to the diagonal current, and the different changes in the current at different stages of the water, the result of the knowledge obtained by you from a long acquaintance with the river and this particular locality, or a theory which you have determined upon since the collision, to account for the same?

(This interrogatory objected to by proctor on the part of respondents, on the ground that the interrogatory assumes it to be true that the witness has given a theory instead of a statement of facts.)

Ans. That knowledge is derived from practical demonstration from a long experience as pilot on the river, and a former residence in that locality. I never made a closer examination of the stiffening and bracing of the piles under the bridge, other than as I passed it up and down on my boat. I have been several times close upon it, the boat lying against it in maneuvring to get through. The highest stage of water commenced about the first of March, 1866, or nearly about the breaking up of the ice, and fluctuated for nearly a month within

a foot or two, say throughout March. It fell two, three, or four
181 feet in April; in May it fell more. About the first of June it began to get pretty well down, and in the last of June we had the lowest water of the season. The speed of the diagonal current spoken of was about two or two and a half miles per hour. The position of the steamer and tow, marked No. 6, on diagram marked "B B," is positively accurate, the same having been made with reference to certain fixed objects. Position No. 1 I am not so certain about, as to the distance from the west bank of the river; I think it is very nearly correct. I feel certain of the course, as marked on the diagram, as far as the wreck of the "Martha." The remaining positions are correct, to the best of my recollection. I am certain that at no time after I rounded out from the dock was I east of a direct line with the west side of the piling of the bridge, which line, if protracted, would strike the outside of the foot of the island. The island and the bridge have been the marks by which I have been governed in running through the bridge. This was my first trip down that season. I intended to follow the course laid down
182 on diagram, and marked "Course intended to be pursued by pilot," because it was one of two matured and distinct plans that I had of going into the bridge. The other was to run on a straight line with the middle of the opening. When we land at Meredosia, above the bridge, in high water, with a tow, I pursue the circle course. Sometimes, when the tow is well balanced, I pursue the other course at high water, when it is daylight. I suppose that the steamer and tow, when they were at the position as designated on diagram as No. 4, they were about two hundred feet from the west bank of the river; I think might have been from two hundred and twenty-five to 250 feet. We were nearly about the same distance, perhaps 300 feet from the upper end of the piles. The engine was stopped at position No. 4, in order for the steamer, with the assistance of the rudder, and the effect of the tow on the steamer, to get into position No. 5. At position No. 5, the larboard bow of the steamer was probably about 125 from the upper end of the piling. It was not my intention originally to get into position designated as No. 5, because I had adopted the circuit plan for the reason I thought, that under the circumstances, with that kind of a
183 tow it was the safest. The danger existed in flanking against the long piling, as designated in figure No. 6. I could not state exactly, after leaving Meredosia landing, how long a time elapsed until we got into position No. 5; I think it may have been from a quarter to a half hour. Exactly how long after I first discovered the canal-boat would rub, until she struck, I cannot say; it was only a few seconds. The moment I saw the canal-boat would rub, as testified in my examination-in-chief, was the first time I made up my mind the canal-boat would strike. The reason why, when the steamer was in position No. 3, that I did not run up to the dotted line, and pursue the course originally intended, was because she was then going back and swinging to the larboard a little, and by the time she had got any steerage-way at all, she was in position No. 4. It might have been possible to have backed clear of the piling. It is possible I might have got into the course that I had originally adopted by backing, but had not then abandoned my original plan, and supposed I could get there by going ahead.
184 Had I been in the course designated by the dotted line, I don't think the accident would have occurred, if my original plan had been carried out. My original plan was to have kept the steamer on the dotted line, or as near it as possible, and straight with the current as possible, until the head of the steamer was about opposite the stone

piers in the draw, to have backed up in due time, so as to prevent the canal-boat from hitting the piling, easing the stern of the boat around in a line and against the piling, then dropping through with the force of the current. The dotted-line plan is one of two plans adopted by steamers having tows, or having different kind of tows, or being without tows, after starting from the Meredosia landing.

X-int. 2. Do I understand you, then, to say that at any stage of the water, one of these plans of getting through the bridge safely with a tow is equally safe as the other, and that it is optional with the pilot to adopt either that he pleases?

Ans. That depends upon circumstances. The circumstances are, in case the boat has no tow, or has a properly balanced tow, (that is, as much on one side as on the other,) and minds her rudders or
185 helm in going ahead or backing ordinarily well, one plan is as safe or feasible as the other.

X-int. 3. Then I understand you to say that the diagonal current, mentioned by you in your examination-in-chief, does not tend to influence the safety of the passage through the draw. Is that so?

Answer. Most emphatically, no.

X-question 3. Do you intend me to understand you, then, to say that the said diagonal current has a tendency to drive steamers and their tows down upon the bridge?

Ans. That depends upon circumstances.

X-question 5. What are the circumstances which would cause steamers and their tows to be carried down upon the bridge by the diagonal current?

Ans. One circumstance would be having one boat only one side in tow; another circumstance would be the imperfect handling or steering of a boat, as before said, in backing or going ahead, or any other circumstance by which you might be ordinarily prevented from keeping advantage of this diagonal current with the boat and tow.

186 X-question 6. Is or is not the effect of this diagonal current to drive boats or steamers diagonally from the point designated on the diagram as "Bank of the Illinois River," on the west side of the river, toward the east side of the river?

Ans. I think it is, in a measure.

X-question 7. If it does not very largely influence the course of steamers and tows, why do you give it so prominent a place in your direct examination?

Answer. That depends upon circumstances.

(Answer objected to by proctor for libellants as being irresponsive.)

Question again put to witness.

Question objected to on part of respondents as not presenting an intelligible interrogatory.)

Answer. That depends on circumstances.

X-question 8. Is or is not this diagonal current that you speak of the principal cause of the perils of passing through the Meredosia bridge?

Ans. It is one of the principal causes.

X-int. 9. Should you place a boat, without any means of propulsion, at the point marked on the diagram "Bank of the Illinois River," what would be the direction taken by the boat, carried along by the
187 force of the current, at the stage of water at the time the "Ajax" was lost?

Ans. That would depend altogether on circumstances, neither of which would be in my opinion an accurate demonstration.

X-question 10. What would have been the course taken by a boat without propulsion, under such circumstances as existed at the time the "Ajax" was lost?

Ans. I think it would have been on nearly a line from point to point. The point I mean is on the Meredosia side, at the extreme lower end of the town, and striking the bridge diagonally, unless influenced by wind.

X-question 11. Did you see the canal-boat after her loss? If so, when, where, and did you make a personal examination of the damages sustained by her? And state particularly the extent of the damages as regards the cause of her sinking.

Ans. I saw her some time in June; I was aboard of her. There was about 2 feet of water around her. I made a personal examination of her.

188 As well as I could judge, the larboard quarter of her stern, commencing from about 12 to 15 feet from her transom, was stove in, apparently from a foot to 2½ feet below her deck, the breach continuing all the way to her stern. I should say the breach was from one to 2 feet wide. Some of the timbers forward of the breach were cracked and driven in. The breach was not all above the water when I saw it. The stem of the boat was not injured by the collision.

X-question 12. Was the steamer "Admiral Farragut" injured by the collision?

Ans. No.

X-question 13. Who was on deck and in the pilot-house at the time of and before the collision, from the time you left the Meredosia landing?

Ans. I think my son Henry was in the pilot-house most all the time. I was in the pilot-house also. The mate, Mr. Niemann, was on the hurricane-roof. He was on the roof some of the time. He was not there at the time we left the landing, but was shortly afterwards, and particularly some little time before we got into the bridge. I know of no one else on the hurricane-roof. Captain Clark and Mr. Nolte were on the

189 deck of the canal-boat. The crew of the steamer were on board somewhere, but I could not see any of them. The pilot-house is about 22 feet above the main-deck, and about 55 or 60 back from the stem. The pilot-house is open, with window-lights all the way round, except in front. I could see the mate from where I stood all the time while he was on the hurricane-roof. We have no particular watches on our boat. It is my watch all the time on the downward trip when there is any apprehended trouble or danger, or when there is work to do, and, as a general thing, going down, the mate is around.

X-question 14. State who had the wheel of the steamer from the moment you left the Meredosia landing till the moment of the collision.

Ans. Neither of us had the wheel for a minute or minute and a half after starting. I told my son to strap the wheel down hard aport. That was before starting. When we were ready to start, and the steamer let go from the dock, and when I saw her head had swung off sufficiently,

190 while warming my feet I told Henry, my son, to ring the go-ahead bell. She went ahead, commencing to round out, as before stated. I then unstrapped and took the wheel, and continued at it, manœuvring the steamer until she went through the bridge. From the time we left Meredosia landing until the collision, my son Henry did not have the wheel.

X-question 15. Did you not state in a conversation which took place in the pilot-house immediately after the collision between yourself and Captain Clark, that your son Henry had the wheel until a few moments before the collision, and that you then took it, or words to that effect?

Ans. Most emphatically, no; I did not say so.

X-question 16. State what was said in reference to your son Henry's having the wheel, if anything.

Ans. I recollect a conversation, but not the exact time or place, with Captain Clark, to the effect that some time before landing at Meredosia, coming down that trip, Henry had the wheel; that I took the wheel, as is usual for me to do under the circumstances, in order to make a nice landing, and was some time manœuvring to get a landing at all. I thought he might have done as well if left at the wheel.

191 X-question. 17. You state in your direct examination that an usage or custom exists on the Illinois and Mississippi Rivers as to the liability of a steamer contracting to tow canal-boats or barges for damages sustained under such contract. Please state whether such usage or custom is recognized by both parties to towage contracts, or whether only steamboat men have adopted and recognized such usage or custom, and what circumstances does such usage cover.

Ans. I consider both parties recognize such usage or custom. That usage or custom covers the ordinary perils and dangers of river navigation, and excludes the idea that the party towing is not responsible for want of due diligence and care on his part.

X-question 18. Do you know of any actions at law ever having been brought to recover damages under circumstances such as the loss of the "Ajax?"

Ans. I do not know of any.

X-question 19. Please state what you meant when you said in your conversation with Captain Clark, "I ought to be made to pay all damages I had sustained there for helping to build it," (meaning the bridge.)

192 Ans. I suppose the conversation was ambiguous in that place, and really did not mean much of anything. I was reflecting at the time on being one of the parties who procured a charter for the bridge, and having boated a majority of the stone to build the piers with. I meant to say that I ought to stand or lose the damage I had sustained.

*Re-direct examination.*

Interrogatory 1. Are there or not two passages through the bridge, one on each side of the centre pier on which the drawbridge turns, and would there have been less or more hazard in attempting to pass on the side other than the one you did pass through at the time of the collision?

Answer. In high water there are two passages, one on each side of centre pier on which the draw rests. At that time, had I made the calculation to have passed through the passage other than the one I did pass through, I could have done so with equal safety.

193 Question 2. Was there or not, at the time of the disaster, any deficiency of hands on the "Farragut?" Was or not the disaster attributable to the absence of any hands or officers?

Ans. There was no deficiency of either hands or officers for the proper handling of the boat.

Question 3. Were there or not any members of your family on the Farragut at the time of the disaster; and, if so, who?

Ans. There were. My son Henry, my daughter, my wife, and small child; also my sister and niece. Some of Mr. Nolte's children were also on board.

Question 4. In looking back over the circumstances attending the loss of the "Ajax," do you know, or do you now perceive, any acts or omissions on the part of officers or crew showing neglect, carelessness, or want of skill, to which said disaster may be attributed? and, if so, state what they were.

Ans. I don't see any.

(Signed) CHA'S S. EBAUGH.

(Here follows map marked page 193.)

*Deposition of Charles Clark.*

194 The direct examination of Charles Clark having been taken ex parte at Chicago, the libellant now produces him for cross-examination.

*Cross-examination.*

X-int. No. 1. Did you, or did you not, enter a protest at St. Louis shortly after the sinking of the "Ajax," in order to get your insurance on the "Ajax?"

Ans. I entered, or caused to be entered, a protest there for the benefit of whom it may concern.

X-int. 2. Did you, or did you not, receive any insurance on the protest; and, if so, how much?

Ans. The boat was insured under a policy for 1,500 dollars. The policy, when taken out, had been assigned to some of my creditors as collateral security for my debts. I received a receipt from my creditors for those debts, which satisfied me that the insurance had been paid.

X-int. 3. Did you or not, in making the protest, in substance swear that the loss of the "Ajax" was without fault on the part of the officers and crew of the "Farragut," or that the loss was a casualty beyond the control of the "Farragut," or that the loss was inevi-
195 table, and not attributable to want of skill or carelessness on the part of the "Farragut?"

Ans. I think not. I did make an affidavit at the time. I think I was sworn to the protest.

X-int. 4. On leaving the dock or wharf at Meredosia, how did the "Farragut" leave? Did she round out or back out into the river, and how was she lying at the dock—with head up stream or down stream?

Ans. When she laid at the dock I think she lay with bow up stream; I am not positive. I do not know how she did leave the dock. I was in the cabin of the canal-boat asleep at the time. When I came out she was a little way from the dock, a little above or below; it is my impression she was below the dock and was heading down stream.

X-int. 5. Did she back out or round out into the stream above or below the wreck of the "Martha?"

Ans. I don't know where the "Martha" lies.

X-int. 6. Did you own the "Ajax" at the time of her loss; and, if so, of whom did you buy her, and at what price?

Ans. I did own her at the time of her loss. I bought parts of her at different times. I bought ¼ of her of John P. Chapin, of Chicago,
196 in the month of September, 1863. I negotiated with a man named Randolph, who was ½ owner, but got the bill of sale from J. P. Chapin. I do not recollect what the last ¾ cost me exactly. It was from 700 to 1,000 dollars. I bought the last ¾ in January, 1865.

X-int. 7. How old was the "Ajax" in 1863, when you bought the third of her?

Ans. About 7 months old.

X-int. 8. State your knowledge of the age mentioned in your last reply.

Ans. By her license and custom papers, sworn to by her builders, which I had in my possession that year.

X-int. 9. Have you any other means of knowledge of her age, and do you know or believe that to have been her age at the time you bought her?

Ans. I have been on the Illinois and Michigan canal about 12 years, perhaps a little more or less. I never saw any other canal-boat by the name of "Ajax." I believe that to have been the age of the hulk, or principal part of the boat. I think she had an old cabin, or house, on her.

197 X-int. 10. Do you or not know or believe that this same boat or hull had formerly another name?

Ans. There might have been some portions of her, such as the bow, stern, or a few of her bottom plank, that might have gone under another name. I believe that the old canal-boat "Nile" was torn to pieces in Chicago, and perhaps some portions of her, such as they considered good, irons, wail irons, spike, &c., were used in building the "Ajax." I did not see her rebuilt. I believe that the principal part of the hull was new, from the fact that I understood at the time she got her name of "Ajax," in the spring of 1863, that no second-hand or rebuilt boat would be allowed or granted a license in changing her name.

X-int. 11. Do you state that as your reason why you believe her to have been built mostly new in 1863?

Ans. That is one part of my reason. I at one time was in conversation with the builder of the boat. He asked me if I had been buying into the "Ajax." He said she was a new boat, but had an old cabin on. I asked, was there no part of her old. He said she was just as good as new.

198 X-int. 12. Was the "Ajax" built of the material, new and old, you speak of, on a distinct, different keel or model from that of the "Nile," or was she only what is called rebuilt on the old frame and model of the "Nile," putting in only such new timber as was then rotten or unfit?

Ans. As regards the keel, I cannot answer. I don't know whether she has a keel. I don't know what you call a canal-boat keel.

X-int. 13. Please state, if you know, what repairs, if any, have been made to the Ajax since 1863, and at what cost.

Ans. Two steamboats ran into her stern, on the Cumberland River, while loaded with government grain, in 1864, I think; tearing her stern above water nearly off from her. I got her repaired at "Mather and Kinnefeck" dock, at Bridgeport, Illinois. I think the bill for repairs, iron-work, &c., was on or about 240 dollars. Everything was torn out, and new timbers put in where the break was. In the fall of 1864 I had some repairs done on her at Peru, Illinois. To the best of my knowledge, the bill was about 168 dollars. In June or July, 1865, a vessel struck her in the night in Chicago Creek, lying at the dock, in which she sprung a leak. She leaked very bad. I took her to "Mather

199 and Kennefeck" dock again, and had bilge-streaks put into her—I think she had no bilge streaks before then—and had her bolted and fixed up stronger than she had ever been before since I owned her. This cost me on or about 300 dollars. I had some repairing done at

Beardstown, Ill., last winter. Her bow stem had been started from her dock a little on top by running into the Lucy Bertram. She was repaired by a man by the name of Thompson, whom I employed to examine, fix, and make her seaworthy. He went to work on her. I don't know how long he worked. I paid him, I think, some 6 dollars for his services, and I found the material; it was not much. When he got through he told me he considered her all safe.

X-int. 14. Was the "Ajax" ever injured or sunk by running against a bridge or bridges, since you have owned her, except in the case mentioned in your libel; and, if yea, has she more than once, and how many times?

Ans. Once only before this. She was sunk at the Meredosia bridge, while in tow of the steamer St. Croix. The extent of damage to the canal-boat was not much. She struck against the stringer, and
200 broke from 2 to 3 plank in for about 30 feet in her side. It was somewhere on the larboard side, between the middle and forward hatch. The St. Croix was a side-wheel boat; that was all the damage done. The plank were broken between the timbers. I think the expense of repairing the boat was not far from 60 dollars; my expression is that it was not more than 30 dollars.

X-int. 15. Have you all the injuries, accidents, and damages that the "Ajax" received, since you became owner of her, up to the time of her sinking at the Meredosia bridge?

Ans. I do not know.

X-int. 16. Have you stated all the accidents, injuries, and damages that have happened to the "Ajax," since 1863, that are within your knowledge?

Ans. I think that I have; though there may be some trifling things that I may have omitted.

X-int. 17. Did or did not the steamer "Tiger" sink the "Ajax" since you were the owner of said "Ajax?"

Ans. Never to my knowledge. I have no recollection of any such occurrence. I have no recollection of the "Tiger" ever doing any damage to her.

X int. 18. Did you or not tell Captain Ebaugh, in the presence
201 of Henry Ebaugh, that the "Tiger" sunk the "Ajax" loaded with lumber, and you took her to St. Louis, and unloaded her, and raised her; or did you say anything to Captain Ebaugh, in the presence of Henry Ebaugh, to that purport, on that trip down that the "Ajax" sunk?

Ans. I was on board the "Farragut" after I was rescued from the water; also my wife; she was nearly naked. I was very much excited at the time, on that trip and afterwards, and also mortified by the dilapidated condition in which I was. I had to go with my wife to St. Louis on that boat and back, and I don't really know how many parties I might have conversed with, from the very fact that it was all excitement with me all the time. I was annoyed with a great many questions; and I have no knowledge of telling Mr. Ebaugh any such thing. I may have said a thousand things.

X-int. 19. Do you now say that you did or did not make the statement mentioned in the last interrogatory, or a similar one?

Ans. It is my impression that I did not say any such thing in regard to the "Tiger." I don't know why I should have said any such thing, for I don't know of her doing me any damage.

202 X-int. 20. Did all the damages and repairs mentioned by you, in answer to these cross-interrogatories, enhance the original value of the canal-boat "Ajax," or depreciate the same?

Ans. I consider that they enhanced the value of her; that she was worth more. I think she was worth nearly as much again as she was when I bought her.

X-int. 21. Was the "Ajax" inspected after she was stove the last time, previous to the one on the 8th March, 1866; and was she considered by the inspector seaworthy; and by the insurance agent here, Mr. L. F. Sanders; and in procuring a partial load at Beardstown, did you not do so by suppressing the fact of her being stove, and consequently being subject to reinspection before loading again?

Ans. She was not inspected by any regular inspector, nor by any inspector of the "board of underwriters." She was not considered seaworthy by Mr. L. F. Sanders, insurance agent at Beardstown, on the day of leaving the port of Beardstown, in tow of the "Farragut." But in the fall before, previous to putting on the load, Mr. Dutch came to me and said he would like to load my boat with grain for St. Louis. I told him that I would be very glad to take it; that I wished him to have
203 the insurance agent come down and examine the boat, from the fact that the "Ajax" had met with a little collision while on her last trip before. The insurance agent came down, and I showed him where the damages were. He said he would take a risk on her. I went on and loaded the boat partly; that is, loaded her for the draft of water at that time. She lay at Beardstown all winter, so loaded. In the spring I dropped down to the landing, overhauled the grain in the hatches to the bottom of the boat, and found her all right. I made some arrangements with Mr. Kuhl for some more grain to finish out a river load, and also with Mr. Dutch. The 1st thing I knew, some one told me I could get no more insurance on the boat—I mean I could get no more insurance on any more cargo in the boat. I saw Mr. Sanders; he told me he would take no more risk. We had some considerable conversation, and I tried to get him to examine the boat where I had her repaired. He refused to do so. I think I told him he was partial toward Mr. Ebaugh, on account of the "Farragut" loading here for St. Louis. I could make no further arrangement with him. Before the load went in I had Mr. Sanders aboard the boat, and showed Mr.
204 Sanders the identical place where the boat was stove. There was no protest entered at the time my boat was stove by the Lucy Bertram, which was the last time anything happened to her before the [the] loss by the "Farragut." I don't think I told Mr. Sanders that there was a protest entered in that case, for the facts would not justify any such statement. I took on, as near as I can recollect, some 200 sacks, more or less, for Mr. Quigg. Mr. Quigg thought there were 600 bushels; I thought about 500 bushels. Mr. Quigg was not connected with the "Farragut" in any way, to my knowledge, but was on board the canal-boat to see after his own grain, and render me any aid he might be able in getting the canal-boat to St. Louis.

X-int. 22. Was or was not the Quigg grain put on board the "Ajax," after Mr. Sanders, as insurance agent, had protested against her carrying any more grain?

Ans. He said he would not take any more risk on the cargo; after that I put on the Quigg grain.

X-int. 23. Did you examine the hull of the "Ajax" at any time after she sunk at Meredosia bridge? and, if so, state particularly the
205 condition of the timbers of her stern where the collision took place.

Ans. I have passed up and down the river a number of times since then, but never near enough to her to make an examination.

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X-int. 23. Did you examine the hull of the "Ajax" at any time after she sunk at Meredosia bridge? and, if so, state particularly the
205 condition of the timbers of her stern where the collision took place.

Ans. I have passed up and down the river a number of times since then, but never near enough to her to make an examination.

X-int. 24. Explain the meaning of the term "bilge-streak," as used in reply to cross-interrogatory No. 13, and what was the necessity of putting it into the "Ajax" at that time?

Ans. It is a streak of plank that is put around the inside of the knuckle of the boat. The knuckle of the boat is where the ribs and floor timbers join on the inside of the boat. The use of the bilge-streak is to support and make the boat strong, and that is the reason I had it put it there. I considered it was a benefit to the boat to put it there.

X-int. 25. Do you know the condition of the timbers on the larboard side of the "Ajax," as to their soundness and age at the time of the collision?

Ans. When I put the bilge-streak in, and tore out on the bilge-streak, the timbers coming down to the floor timber, the timbers on the larboard side of the stern, to all appearance, looked good. They really looked new to me.

206 X-int. 26. Did you have the lining taken off, so that you could see the condition of the timbers in the larboard side of the stern, where they were since broken by the collision?

Ans. I did not.

X-int. 27. In all the repairs which you have put upon the "Ajax," do you, of your own knowledge, know that any new timbers were put in at the larboard side of the stern, where she was crushed by the collision?

Ans. I put some new timbers in her stern, but I never put any new timbers in the larboard side where she was crashed by the collision.

X-int. 28. Look at the diagram "B B," and state whether the position of the "Farragut" and "Ajax" marked No. 5 is correctly marked down as the position of said boats.

Ans. I can't see that the position is correct. My opinion is the position should be further east, from the looks of the plat, at about the position marked "H" on diagram.

X-int. 29. Just before reaching the bridge, and just before the collision, did you or not say to Mr. John F. Nolte that the steamer was in the proper place to go through safely, or words to that effect?

207 Ans. I don't recollect saying such words to Mr. Nolte, and do not recollect saying words to that effect to him. I might have said something. I had a very doubtful opinion.

X-int. 30. On the 1st trip up of the "Farragut," after the sinking of the "Ajax," did you or not tell Chauncy Rice that the sinking of the "Ajax" was not the fault of anybody on board the "Farragut," or words to that effect?

Ans. I can't tell whether I did or not.

X-int. 31. Mark down on the diagram "B B," as near as you can, the position of the "Farragut," when you came on the deck of the "Ajax," from the cabin of the canal-boat.

Ans. It is a hard question for me to answer. I can give my opinion of it. I think it should be in the position marked I on diagram.

X-int. 32. What distance is the position you have marked I from the north end of the piling of the bridge?

Ans. I can't tell. It would only be guess-work.

*Re-direct examination.*

Int. 1. To whom was the policy of insurance on the "Ajax"

208 assigned?

Ans. It was assigned to Dr. B. M. Baker, of Chicago, and Joseph Labie of Chicago.

Int. 2. Who was present, if any one, at the time the protest was made and sworn to by you in St. Louis; and who, if any one, joined in said protest?

Ans. Captain Ebaugh and John F. Nolte were present, and, I think, signed the protest with me.

Int. 3. State, as nearly as you can, the circumstances attending the St. Croix collision.

Ans. I was in tow, with a number of other boats, with the St. Croix. While running down to the Meredosia bridge or draw, the pilot got her a little too far to the east shore; consequently she struck the bridge. It is my impression it was the latter part of August, or first of September, 1865. The bow of the canal-boat struck almost directly on the northwest corner of the piling. The ribbon or stringer on the piling projects over a little right on the corner. If a boat strikes it very hard it would kill her, and if easy, it would be bound to injure her.

Int. 4. This Mr. Thompson you speak of, was he or not a professed ship-carpenter and caulker?

209 (Objected to by respondents as leading.)

Ans. He was.

Int. 5. You mentioned, in answer to cross-interrog. No. 21, "The insurance agent came down, and I showed him where the damages were." State the name of the insurance agent.

Ans. I believe his name to be Mr. Sanders.

Int. 6. State any conversation that you can recollect having taken place between you and any person on board the "Ajax," while approaching the bridge, and any circumstances you can remember.

(Objected to by respondents as leading and suggestive.)

Ans. I recollect speaking to a man that I believe to be Mr. Nolte, asking him if he had a fender on the steamboat. He pointed toward the jack-staff of the "Farragut." I went and got the fender. It was hanging on the jack-staff of the "Farragut." I came back on the deck of the canal-boat, near where Mr. Quigg and Nolte were standing, aft of the forward hatch. I saw then the fender would do me no good. I dropped the fender and went to get my wife out of the cabin.

Int. 7. State, if you can, what distance the "Farragut" was

210 from the bridge at the time you spoke to Mr. Nolte about the fender.

Ans. I could not say positively. She was some little distance from the bridge. I could not say positively; some 400 or 500 feet from the bridge.

Int. 8. When the examination of the grain in the "Ajax" was made in the spring of 1866, state who made such examination.

Ans. It was done by Mr. Dutch's warehouse foreman and hands principally. I helped some.

(Signed) CHARLES CLARK.

*Deposition of Charles Henry Ebaugh.*

JAN. 28, '67.

My name is Charles Henry Ebaugh; age, 19 years; residence, Beardstown, Illinois; occupation, I am steersman on the Illinois River, and a son of Captain Charles S. Ebaugh. I was on board the "Farragut" on the 7th March, 1866, at Beardstown, Ill. We left on that day with the "Ajax" in tow, and proceeded down the Illinois River. We made two landings at La Grange, and proceeded safely to the upper landing at Meredosia.

211 Int. 1. State the position of the "Farragut" and "Ajax" at the dock at Meredosia.

Ans. They were lying at the upper dock, with their bows up the stream.

Int. 2. Look at diagram marked "B B," and say whether it is correct as a description of Meredosia harbor.

Ans. I think it is correct.

Int. 3. State your means of knowledge as to its correctness.

Ans. I lived there ten months.

Int. 4. State your further knowledge.

Ans. I have landed there with steamboats, and have helped run a ferry there.

Int. 5. For how many years have you been familiar, by actual experience, with the harbor of Meredosia?

Ans. About 7 years.

Int. 6. Look at the diagram "B B," and state what was the course of the "Farragut" and "Ajax" on the morning of 8th March, 1866, after she left the upper dock.

Ans. She rounded out above the wreck of the "Martha No 2."

212 After we got to position marked 1, we stopped the engines and let her float into position No. 2, (though we commenced backing the engines before we got into position No. 2.) We backed up to position No. 3, and then come ahead until we got pretty near to position No. 4. We then stopped the engines and let her float into position No. 5. Then, thinking we would make it, we came ahead on her strong, until she struck. We were working under a slow bell until we stopped in position No. 4. We stopped the engines when we struck in position No. 6, and commenced backing. By that time the "Ajax" had got loose in some way, and commenced sinking. We intended to hold on to her until we got to shore, but finding the ropes were broken, we could not do it. We lowered the yawl and helped get Mr. Clark and his wife out of the water. The mate helped lower the yawl. By that time the "Ajax" was sunk.

Int. 7. Look on diagram "I. B," and at the line marked "Course of Farragut, according to testimony of Dunn," and say whether it would be possible, or probable, for a steamer landed at the upper dock—

213 bow up stream—to take the course laid down by said line.

Ans. It is possible but not probable. I don't think a boat could take that course without striking the bridge at that stage of water.

Int. 8. Would it be possible for a boat and tow, after landing at the upper dock—bow up stream—to come from that point straight down without stopping, on a line as shown by Mr. Dunn on the diagram, with her head down stream, without backing out or rounding out from the landing, and striking the bridge, as shown in position No. 6?

Ans. It was not possible.

Int. 9. Who was in the pilot-house of the "Farragut," and who held the wheel and acted as pilot from the time she left the dock on the morning of 8th March, 1866, until the sinking of the "Ajax?"

Ans. My father and I was in the pilot-house. The wheel was strapped down from the time we left until we got into position "No. 1." I unstrapped the wheel and he shifted the wheel, and rung the backing bell. He had hold the wheel from that time until the "Ajax" struck.

Int. 10. Did your father ever allow you to take the wheel pre-

214 vious to that time, or at any time, in going down through the bridge?

Ans. Never before that time, and once since; but without any tow.

Int. 11. State how long you have been employed on the Illinois River as steersman?

Ans. About 6 years.

Int. 12. According to your experience, did the pilot of the "Farragut" use all necessary care and skill in the trip from the upper dock to attain a safe passage through the bridge?

Ans. He did.

Int. 13. Did you then see, or, upon subsequent reflection, do you now remember, anything that was done, or neglected to be done, previous to the sinking of the "Ajax," by any of the officers or crew of the "Farragut," that caused or tended in any manner to cause the collision of the "Ajax" with the bridge?

Ans. I don't recollect of anything; neither did I see anything at the time.

Int. 14. State whether or not, as steersman, you have ever had the sole management of a steamboat; and, if you have, whether you have frequently.

215 Ans. I have, but not frequently. I have steered boats down through the bridge, but not at that stage of water. I have done so before and since the accident; before the accident, under the direction of another pilot, who was in the pilot-house at the time. I have frequently had the sole management of steamboats, as steersman, in other parts of the river.

Int. 15. Did you see the Ajax at the time of her collision with the bridge? If yea, state where the bridge struck the boat, and where the boat struck the bridge.

Ans. I saw the "Ajax" at the time of her collision with the bridge. I should judge the bridge struck the canal-boat from 6 to 15 from the stern—forward of the stern of the boat. The larboard side of the canal-boat struck the bridge about 65 feet from the north end of the piling.

Int. 16. Have you noticed the cross-current spoken of by witnesses in this case? If yea, state whether it existed at the time of the sinking of the "Ajax," and what its velocity was compared with other times.

Ans. I have. It existed at that time. It was greater at that time than I ever saw it before.

216 Int. 17. Is there any regularity in the course and velocity of the cross-current you speak of?

Ans. I should think not.

Int. 18. Look at diagram "A A," and at the lines marked thereon as "Current at high-water," D D, and state whether, in your recollection, that was the course of said cross-current at the time of the sinking of the "Ajax."

Ans. It was the course of said current at that time.

Int. 19. State if any and what other boats have been wrecked or injured at the Meredosia railroad bridge.

Ans. There was a hay-boat injured there by the "Sam Clark," in 1866. I don't remember whether it was before or after the loss of the "Ajax." Two ice-boats were injured by the "S. C. Baker," in 1866, after the loss of the "Ajax." They were going through the east passage. The "Schuyler" sunk a barge. I can't say whether that was in 1865 or 1866. The "Tiger" sunk a boat loaded with salt in 1866. I think she sunk a boat loaded with corn in 1866, but am not certain that the "Tiger" sunk her. This was after the loss of the "Ajax." The steamer "Beaver" injured two canal-boats loaded with ice in 1866. This was after the loss of the "Ajax." There were 3 ice-boats sunk

217 there in 1864. There have been more or less boats sunk and injured there every year, but I don't know how many. A great many loaded with lumber were injured there, but they would not sink

*Cross-examination.*

X-int. 1. What is your height and weight?

(Objected to as irrelevant by respondents.)

Ans. I weigh about 127 pounds. My height is 5 feet 3 inches.

X-int. 2. Are you now, or have you ever been, licensed as a pilot or steersman?

Ans. I am not now, nor have ever been.

X-int. 3. Who landed the "Farragut" at the Meredosia landing, or who had the wheel at that time?

Ans. My father.

X-int. 4. Did you or not have the wheel, and attempt to make the landing and fail in such attempt?

Ans. I did not have the wheel, and did not attempt to make the landing.

X-int. —. Did you or not have the wheel before landing at Meredosia?

Ans. I did have the wheel between there and La Grange, some
218 place.

X-int. 6. You state in answer to 2nd direct interrogatory that you think the diagram marked "B B" is a correct description of Meredosia harbor; do you mean to be understood that the distances between different objects on said diagram, as there shown, are actually correct, or that to your eye they appear correct?

Ans. I think they are actually correct.

X-int. 7. State, if you know, who made the said diagram and where it was made.

Ans. I don't know where it was made; I saw Mr. Fred. Nolte finishing it.

X-int. 8. Where did you see him finishing it?

Ans. During his examination at the office of the circuit clerk at Beardstown.

X-int. 9. Were you or not present during the examination of your father in this case?

Ans. Part of the time I was.

X-int. 11. Were you or not present during the greater part of the time?

Ans. I was.

X-int. 11. Have you had any conversation with your father or
219 with Mr. Frederick Nolte in reference to the facts as stated in your examination?

Ans. Some with my father.

X-int. 12. Has or not your attention been called to the positions marked "1" to "6" on diagram "B B" by any person previous to your examination; and, if so, by whom?

Ans. My attention has not been called to the positions previous to the examination by any one.

X-int. 13. Were you or not present when your father, during his examination, was marking out said positions on said diagram and testifying to the same?

Ans. I was present when he was making out position No. 1, but when I saw the diagram again I thought the position had been changed.

X-int. 14. Were you not present also when he marked out the other positions, Nos. 2 to 6?

Ans. I was not.

X-int. 15. Was or was not the diagonal current very strong about the time of the said collision?

Ans. It was pretty strong.

X-int. 16. Was its tendency to drive objects to one or the other
220 side of the river; and, if so, to which side?

Ans. It would drive the boats to the east side.

X-int. 17. Were you or not in the pilot-house all the time from the time you left the Meredosia landing until the collision?

Ans. I was.

X-int. 18. Was your father in the pilot-house at the time the 1st bell was pulled to start the engines at the Meredosia landing, and did he remain there until the collision?

Ans. He was not; he was coming in; he remained in the pilot-house after he came in until the collision.

X-int. 19. Where was the "Farragut" when he came in, and had she not already arrived at position No. 1?

Ans. She had not arrived at position No. 1; she had just started ahead; she had gone about ½ the length of herself.

X-int. 20. Standing as you did in the pilot-house on the night in question, how do you judge correctly of the velocity of the current?

Ans. I judge from the way the boat handled, and the way she backed up after the canal-boat sunk, and the way the oats, plank, and stuff drifted off.

221 X-int. 21. State, if you can, the daily average of tows that go down the river during the season of navigation.

Ans. About 4 tows a week pass down during that part of the season in which tows run, which is about two or 3 months.

X-int. 22. You state in answer to direct-interrog. 8 that it was not possible for the boat to strike the bridge as shown in diagram, position No. 6, if the steamer had taken the course laid down on the diagram as "Course of Farragut, according to testimony of Dunn." Look at diagram marked "C C," attached to Mr. Dunn's testimony, and state whether or not the steamer, pursuing the course as testified to by Mr. Dunn, could strike the piling with the canal-boat as therein designated.

Ans. She could had she pursued that course.

X-int. 23. Upon what do you base your evidence that the collision occurred at a point on the bridge 65 feet south of the north end?

Ans. When I stood in the pilot-house I looked to see the steamer strike the west pier; when I saw she would not strike it, I looked at the other side.

X-int. 24. When did you first discover that the canal-boat
222 would strike? How long before it struck?

Ans. About ½ minute; I did not judge she would strike to hurt anything then.

X-int. 25. Then your attention, up to the time of the collision, was drawn to the west pier, thinking if she struck at all it would be on that side, was it?

Ans. All of my attention was not drawn to the west pier.

X-int. 26. When the steamer and tow were in position No. 4, as per diagram, how far was she from the north end of the bridge?

Ans. About the length of the steamer.

X-int. 27. During your experience as a steersman have you ever been on a steamer when any other collision occurred at the bridge? If so, state the circumstances.

Ans. I was on the "Belle Peoria" as steersman, but not on duty, at the

time; it was in the daytime; she was a passenger boat; I was on the "Farragut" when we run a barge on the bridge; it was our own barge; my father had the wheel; it was in 1864; it was in the daytime. These are the only times that I recollect of during my experience when I
223 was personally present and knew the circumstances connected with the collision.

X-int. 28. State whether or no your father, during your experience as a steersman, has always piloted his own steamer, or whether during that time he employed other regular pilots; and, if so, give their names.

Ans. My father piloted part of the time, and part of the time he employed other regular pilots; he has employed John Harper, Frank Davis, John Dowler, John Leach, and Hardin Colter.

X-int. 29. During the time when these men were so employed did you occupy the position as steersman on the "Farragut?"

Ans. Part of the time I did; the largest part of the time.

X-int. 30. Did you ever act as steersman on any other boat but the Farragut and the "Belle Peoria?"

Ans. I did; on the steamers "Leodoria" and "Beaver;" that is all I can think of; the Leodoria was a freight-boat, and the "Beaver" was a tow-boat; I was about 2 months on the Leodoria; I only made 2 trips on the Beaver.

X-int. 31. Do you or not know personally of the circumstances
224 attending the several other collisions mentioned by you in your direct examination, or is your information merely hearsay?

Ans. I saw two boats loaded with lumber; I think the St. Croix had them in tow; I was running the ferry at that time at Meredosia; the boats were towed astern with a leading line, and as the steamer went through the passage it swung them against the bridge at the north end of the piling; the 2 ice-boats in tow of the "Baker" struck the bridge on the east side of the piling at the lower end; they were going through the east passage; I did not see them strike and don't know the circumstances; I saw the "Tiger" when she sunk the boat loaded with salt; I was on the ferry-boat; she struck on the west side of the piling about 65 feet from the north end; I guess she had over 8 boats in tow; all the rest that I have mentioned I don't know the circumstances attending the collision; I saw them after they were sunk and injured.

X-int. 32. Have you ever, during your experience, while passing down the river with a tow, been obliged to take any extra precautions, such as backing, &c., to get into position in order to go through the draw safely?

225 Ans. I have, under the direction of other pilots; once with the Belle Peoria. We had two barges in tow. The wind was blowing from the northwest. We did not try to go through the bridge, but laid opposite Meredosia for an hour, until the wind lulled a little. Captain March was the pilot at that time. No one goes through with a tow without backing up and getting into shape; and then they go through.

X-int. 33. Please state whether or not your father was excited immediately after the collision of the "Ajax;" and how he comported himself.

Ans. He was not excited, and asked me where the mate was.

X-int. 34. Were you present at the time when Captain Clark went into the pilot-house of the Farragut, shortly after the collision?

Ans. I don't remember being in the pilot-house when Clark came in.

X-int. 35. State whether or not, in a conversation which took place between yourself and Capt. Clark, after the collision, you stated, in substance, as follows: That you had the wheel just before the colli-

sion, but that your father took it from you, and that you would
226 have done better than your father did.

Ans. I did not state anything of the kind. He stated that he thought I would have done better than my father did. He asked me if I had the wheel. I told him that I did not; and he then made the remark above stated.

*Re-direct examination.*

Int. 20. In the conversation spoken of by you with Capt. Clark, did he state anything about the "Ajax;" and, if so, what was his statement?

Ans. He stated that "she was a damned old boat, and that it was an unlucky name." "She came pretty near sinking in St. Louis one time. A tug was towing her, and the wind was blowing hard, and the waves rolled up on her. She was sunk at the bridge once before, loaded with lumber, and he took her to St. Louis and patched the hole up himself."

(Signed) C. H. EBAUGH.

227 *Deposition of David H. Lolis.*

JAN. 28, '67.

My name is David H. Lolis; age, 30 years; residence, Meredosia, Illinois; am in the business of grain and lumber.

Int. 1. Did you or not examine the hull of the canal-boat "Ajax;" if yea, when, and what was its condition?

Ans. I examined it some time in June, 1866. I think it was in the 1st ½ of the month, but am not positive. It was in bad condition. The forestem of the boat was rotten, so that it would not hold nails. The timbers or ribs, at the place where she was crushed in, were broken and rotten. I pulled out a piece 18 inches long that was rotten; some of them were not so. The original timbers (so far as we could see) appeared to be all rotten; but some had been put in alongside of them that were not rotten. The timbers that run the other way—I don't know what you call them—were not sound. I pulled out a piece out of those plank. The timbers that run on the inside of the ribs were damaged and rotten as far as I could see to examine them. I am speaking of that place where it was crushed in. I also examined the
228 inside opposite the place where she was crushed in. The inside timbers were not sound. I do not know what the names of the different timbers are, but I am speaking of the inside lining or plank which support the ribs or run across them. I don't know whether they put them on first when they build the boat or not. The outside plank, where it was crushed, were unsound when we examined it. I thought it would not stand any great strain or pressure. It would have been easily broken. Taking every thing into consideration we pronounced her unseaworthy, and would not have shipped grain on her had she not been broken at all if we knew the condition of her timbers.

Int. 2. Were all the old timbers replaced by new ones; if not, what proportion of them were?

Ans. I do not recollect, but I think not. I think there were only a few new ones. I am speaking of the place crushed in. I could not see the rest. There is nothing further that I can state about the boat, except what we thought about her valuation. The place that was crushed in (the witness here asked which is the larboard and which is the
229 side of the boat) was on the left-hand side aft, just before the cabin.

Int. 3. Which cabin was it?

Ans. It was the after cabin.

Int. 4. How far was this break from the stern of the canal-boat?

Ans. I cannot say how many feet; it seemed to be near the turn of the boat.

Int. 5. From your examination of the boat at that time, what would have been her value while afloat on the 7th March next previous?

(Objected to by libellant, for the reason that by the witness' own testimony he has no knowledge whatever of boats of any kind, or of their construction.)

Ans. We pronounced her worthless at that time if the hole had not been broken in and if she was afloat.

Int. 6. What other parties were with you when you made said examination?

Ans. John L. Pike and Geo. W. Meeteer.

*Cross-examination.*

X-int. 1. State how much water was around the boat at the time of the examination.

230 Ans. I think that at the place where it was broken it was about 2½ feet.

X-int. 2. Was the apperture entirely above water?

Ans. I could not say. I think the less part of the aperture was below water.

X-int. 3. State the length and width of the aperture.

Ans. I should think it was 6 feet long. It may have been a good deal longer, but I could not now tell. I think the width was about ten feet. The timbers were mashed in and I could not exactly tell how large it was.

X-int. 4. Do you mean to be understood that the ribs of the boat were completely broken in two, both old and new?

Ans. I can't say about the new ones, but the old ones were.

X-int. 5. How many old ones were so broken, and how many new ones did you find in the place which was broken in?

Ans. I could not state the number broken; neither could I state how many new ones there were.

X-int. 6. Who employed or engaged you to make this examination?

231 Ans. George Meeteer came to my office the day we made the examination, and asked me to go down with him and examine that old boat. I think those were the words he said. I told him I did not want anything to do with it. I did not know anything about it at that time, and rather he would get some one else to do it.

X-int. 7. Was the service a voluntary one, without a compensation?

Ans. It was.

X-int. 8. Has Capt. Ebaugh or Fred. Nolte ever conversed with you in reference to said boat, or its seaworthiness, either before or since that examination?

Ans. I do not recollect of Mr. Nolte speaking to me about it; Capt. Ebaugh spoke to me about it since I came here to-day, in this room; but not until I had first spoken to him about it.

X-int. 9. Was there any grain in the canal-boat at the time of this examination, and what was its condition?

Ans. There was grain in it. It was rotten and offensive to the smell.

X-int. 10. Have you ever been engaged in the business of building, repairing, or inspecting boats; and do you know anything about the cost of building or repairing of them?

232 Ans. I have not been engaged in such business, and of the cost I know nothing but what I have heard.

*Re-direct examination.*

Int. 7. Whether as a dealer in lumber, you are sufficiently acquainted with the qualities of wood to decide positively as to its soundness or rottenness, strength or weakness, and that your testimony in this case, as to the condition of the "Ajax," is formed from actual knowledge of the facts you state, or merely from conjecture?

Ans. It is from actual knowledge.

(Signed) DAVID H. LOLLIS.

*Deposition of John L. Pike.*

JAN. 28, '67.

My name is John L. Pike; age, 23 years; residence, Meredosia, Illinois; occupation, grain-dealer. I went and examined the boat at the same time as the witness Lollis, at the solicitation of Mr. Meeteer. I have heard the testimony of Mr. Lollis on the subject of the examination, and the statements made by him in his deposition are sub-
233 stantially correct, and I concur with his opinion expressed therein. I have been employed in a lumber-yard, and know something about lumber.

(Signed) JOHN L. PIKE.

*Deposition of Joseph Bolejack.*

JAN. 29, '67.

My name is Joseph Bolejack; age, 33 years; residence, Beardstown, Illinois; occupation, engineer on the river. I was engineer on the steamer "Farragut," March 8th, 1866, and was on duty at the time of leaving the dock at Meredosia. I was in charge of the engines.

Int. 1. Do you now recollect, and can you state, the course of the "Farragut" from the landing at Meredosia until she passed through the bridge?

Ans. I can at various times.

Int. 2. Look at the diagram "B B," and state what was the course pursued by the "Farragut."

(Libellants object to the witness being shown the diagram until he has first testified as to the course pursued by the Farragut without the means of information to be derived from the diagram.)

234 Ans. We lay at the upper dock, bow up stream; when we started we came ahead on her and rounded out. While we were rounding out, I was at the throttle-valve of the engine. When I went to the side door of the engine-room, we was headed across the river, for the west shore. She was a little beyond the middle of the river, when the bell was rung to stop, and I stopped her. The bell was then rung to back her, and I backed her. We backed for some time; I don't know how long; and then we stopped again, and then come ahead on her, with a full head of steam on her at first, and then the slow bell was rung, and we came ahead slow. At that time she headed quartering down the river, her head to the west shore. I suppose—I do not know, for I was not piloting—that she would not come around to suit him, and he stopped her and backed her, and then he stopped her and come ahead on her again, and after she made a few revolutions he rung a slow bell; then he rang the bell to

then he rang the bell to come ahead strong; and I threw her
235 throttle wide open, for the purpose of giving her steerage or head way. Soon as I opened it, I ran again to the side door of the engine-room, and by this time she was down beyond the head of the piling, and I saw by that time she must strike. It was not over ½ minute when the canal-boat struck the piling, about midway, or thereabouts, between the head of the piling and the centre pier. The canal-boat was struck near the stern, to the best of my knowledge.

(The answer of the witness is objected to by the libellant, because it is made with the diagram before him, showing the course and position of the boats, as drawn by Capt. Ebaugh, and with reference thereto.)

Int. 3. Has the statement you have made of the course of the "Farragut" been in any manner prompted or aided by reference to said diagram; or has it been made independent of said diagram; and did you or not make substantially the same statement in presence of the libellant, Clark, and in presence of the proctor for libellants in this room, before consulting said diagram?

Ans. I could have made, and should have made, the same statement without seeing the diagram. I did make substantially the same
236 statement in the presence of said Clark and proctor for libellants, in this room; but it was not made before looking at said diagram; and said diagram was looked at by me, at the request of the said proctor for libellants. We were looking at the diagram at the time we were talking. I drew no idea from it at all. I didn't vary any from what I should have stated if I had not seen it.

Int. 4. Did you see any neglect or want of care or skill on the part of any of the officers or crew of the "Farragut" which caused, or in any manner tended to cause, the sinking of the Ajax?

Ans. I did not.

Int. 5. How long have you been acquainted with Capt. Ebaugh, and been in his employment as engineer?

Ans. I have been acquainted with Capt. Ebaugh about 9 years. I acted in the capacity of 2nd engineer about 9 years ago for him. It was no later than 1859, when I was 2nd engineer on the steamer "Progress." I have not been employed by him ever since then. I have been engineer on the Farragut since August, 1865, with the exception of some 3 or 4 months.

237 Int. 6. State what has been Captain Ebaugh's character during that time for sobriety, carefulness, and skill as a steamboat man.

Ans. I have always heard him spoken of as a No. 1 steamboat-man; and there was not one who could beat him steamboating on this river. He was a sober, careful, and skillful man.

*Cross-examination.*

X-int. 1. What is your present business, and by whom are you employed, and where?

Ans. Engineer; and am employed by Capt. Ebaugh, in the repair of the machinery and boilers of the "Farragut."

X-int. 2. State where the engine-room of the "Farragut" is located on the steamer as to the deck and distance from the stern of the [illegible]

Ans. It is on the stern, on her lower deck. There is merely a partition between the [illegible] and the engine-room.

X-int. 3. State where the door is located that you say you looked out of on the several occasions as to distance from the stern.

Ans. It is about 20 feet from the bulkhead on the larboard, or
238 port side. The bulkhead is the partition above referred to.

X-int. 4. State how the morning of the 8th March was, whether dark or moonlight.

Ans. I can't state that; I don't recollect.

X-int. 5. How many times did you look out of the door on the port side after leaving the landing until the bridge was struck?

Ans. I could not say as to the number of times but at various times.

X-int. 6. How many times did you reverse your engines between the landing and the bridge; that is, backward?

Ans. I backed her three times.

X-int. 7. Does or not Capt. Ebaugh exercise the same amount of caution in going down the river in passing through the draw?

Ans. All I can judge by is the bells. I have handled the engines less and more than I did at that time.

X-int. 8. How does it happen that your memory at this time, nearly one year after the occurrence, and these minute details all occurring in the ordinary course of your duty, and before anything had oc-
239 curred particularly to fix them in your mind, is now so clear in reference to those details?

(Objected to by respondents because it is argumentative.)

Ans. The reason why I recollect that is because we don't sink boats every day.

X-int. 9. Is that your only reason?

Ans. It is the only reason I can state; and I think that is a good one.

X-int. 10. Had you any assistant with you in the engine-room at that time?

Ans. I had none. There is none required on a stern-wheel boat of her cast.

X-int. 11. When the steamer headed down stream, could you see from the door of the engine-room exactly the point to which she was heading?

Ans. I could see straight along the guards.

X-int. 12. You say you do not know how many times you looked out of the door. Can you not say about how many times?

Ans. A dozen or less.

X-int. 13. Is it not your duty, when going through the bridge, to stand by your engine, or throttle-valve, and not leave them, or it, even for one second?

240 Ans. I don't consider it my duty to stand by the throttle-valve all the time.

X-int. 14. Have you since the said collision had any conversations with anybody, and particularly with Capt. Ebaugh, in reference to the statements made by you in this deposition?

Ans. I have no conversations with anybody direct about that.

X-int. 15. Has not Capt. Ebaugh, or any other person, spoken to you in regard to the stopping, reversing, and slowing of the engines, or ringing of the bells from the pilot-house on that night?

Ans. No, sir.

*Re-direct examination.*

Int. 7. Describe the relative positions of the throttle-valve, [illegible] board and starboard engines, and the larboard door, from [illegible] mention having looked previous to the collision.

ing as often as once a month. If there ever was a sober, temperate man he is one, and that is his general character. He has always been considered one of the most careful men on the river. As a pilot he has always stood as number one.

Int. 12. State your means of knowing that Capt. Ebaugh acted
247 as pilot on the morning of March 8th, 1866, in going from the upper landing through the bridge.

Ans. I saw him at the wheel, as we were passing through the bridge, just before the collision. He had the sash shoved back, and was looking in the direction of the canal-boat and bridge.

Int. 13. Was there any lack of care and skill on the part of any of the officers or crew of the steamer Farragut on the morning of the 8th March, 1866, previous to the collision?

Ans. There was not. If there had been, I should have noticed it. The officers of the boat were all on duty and in their proper places.

Int. 14. When she was in position No. 5, as you have described it on the diagram, was she apparently in a fair shape to make a safe passage through the draw?

Ans. She was.

Int. 15. Do you know the state of the hull of the "Ajax," as to strength and soundness, just previous to the collision?

Ans. Personally, I know nothing. I heard that Sanders, the insurance agent, refused to take any more risk on cargo on her, on account of her unseaworthiness; and it has been my experience that
248 when the boat's planks are rotten, as I understand they were by the testimony of witnesses Lollis and Pike, both outside and the lining inside, that then the timbers are in a worse condition than the plank are.

Int. 16. State, if you know, whether the passages through the bridge have not always been attended with difficulty and danger; and state your means of knowing.

Ans. I always thought they were, going down stream; I have been up and down there a great many times, and we have often had difficulty with the Farragut in going through the bridge. Several times we have struck the bridge, but not hard enough to do any material damage.

Int. 17. State such cases as have come to your knowledge of these difficulties and dangers.

Ans. The current, the wind, and sometimes a boat being loaded a little out of shape, so that she does not handle well.

*Cross-examination.*

X-int. 1. Give the names of the parties who owned the "Ad-
249 miral Farragut," and their respective interests in the same, in March, 1866.

Ans. Captain Ebaugh owned $\frac{3}{8}$; Mr. — Quinlin, of St. Louis, $\frac{1}{4}$; George Wolf, of St. Louis, $\frac{1}{8}$; S. E. Marsh, of Naples, $\frac{1}{8}$; John F. Nolte, the witness, the other $\frac{1}{8}$. The interest of Mr. Wolf was transferred to Capt. Ebaugh about that time; whether before or after the collision, I don't know; I think it was after. The other interests have not changed.

X-int. 2. Have you ever acted in any other capacity than that of carpenter and caulker on board of any boats? and, if so, state when and in what capacity.

Ans. I have; I have acted as steersman, engineer, mate, clerk, and captain; as steersman on the "Mustang," in the winter of 1848 and 1849, on the Mississippi River. The pilot left the boat, and the captain

and I were compelled to take her up. I have acted as engineer on the same boat; I have acted as mate; also clerk; also captain, on the "Farragut." I had charge of her 3 or 4 trips. The first time we run in the fall of 1864. We had regular pilots at that time, Mr. Harper and Mr. Davis.

X-int. 13. Have you ever during high water in the Illinois River
250 personally steered or piloted a steamer through the Meredosia bridge?

Ans. I never have.

X-int. 4. How long have you been employed as ship-carpenter and caulker on the Farragut?

Ans. Most all the time she has been running, on the Illinois River, and on the Red River; since she was built, in the fall of 1864.

X-int. 5. State what your duties are, in that capacity, on the Farragut.

Ans. To keep everything mended up that we break, and to stop all leaks, if any occur; to keep watch of the hold of the boat, to see that everything is right; that she don't leak, &c.

X-int. 6. Why do you, as testified in your direct examination, examine the hold of the steamer always, after taking on a load?

Ans. To see that she does not leak, or that there are no leaks.

X-int. 7. How long did this examination occupy you on the night of the collision?

Ans. Between 5 and 10 minutes, I should judge.

X-int. 8. How long before the collision did you go on board the "Ajax?"

251 Ans. I should judge somewhere about 5 minutes. It may be a little more or less.

X-int. 9. Why did you go on board the "Ajax?"

Ans. To see if she would go through the bridge all right. I could have a better view, standing on the larboard side of the "Ajax," and to render any assistance if any was required.

X-int. 10. Did you apprehend any collision; and was that the reason you went on board the "Ajax?"

Ans. I did not. I do that every time we go through the bridge with a tow, with our own barges.

X-int. 11. Were you or not present at the examination of Capt. Ebaugh, when he marked out and testified as to the positions of the steamer, on the plat, numbered 1 to 6?

Ans. I was. We have always differed in reference to the positions, as marked by him, 5 and 6. I always thought that the boat was pointed a little more straight for the opening, and come into collision with the piling nearer to the northwest corner.

X-int. 12. How far is position No. 4 from the north end of the bridge, or how far was the steamer from the bridge when you came up from the hold?

252 Ans. When I came up from the hold, I should judge she was about 200 feet; perhaps a litle more, or a little less.

X-int. 13. How far was she from the bridge when she was in position No. 5?

Ans. The bow of the boat was, I think, from 10 to 20 feet above the end of the bridge.

X-int. 14. Were was the stern of the boat?

Ans. It would be 170 or 180 feet.

X-int. 15. When you came up out of the hoid, was the steamer under headway?

Ans. I think she was working ahead, under slow bell.

X-int. 16. Where is the hurricane-deck of the steamer Farragut?

Ans. It is the upper deck; the same on which the pilot-house stands.

X-int. 17. Do you mean to be understood to swear positively that Capt. Clark did not speak to you in reference to a fender, and that he did not go and get one from the deck of the steamer?

Ans. I do.

X-int. 18. Have you not, in your direct examination, that you do not recollect of anything of the kind, and given as a reason for your
253 belief that no such facts existed, that the steamer had but two fenders at the time, and they are still on the steamer?

Ans. I did.

X-int. 19. What has transpired since your reply in your direct examination to make you now positively swear to facts that at the time of such examination existed only in belief or recollection?

Ans. The more I think of it the more certain am I that it is so.

Int. 20. You have stated that Capt. Clark made an oath in reference to the collision at St. Louis. Was or was not that oath in writing?

(This interrogatory is objected to by respondents on the ground that it assumes statements that were not made by witness.)

Ans. It was in writing.

(Libellants object to the admission of any testimony in reference to the affidavit testified to have been made by Capt. Clark, and, as it was an affidavit in writing, call for its production, or a certified copy of the same.)

X-int. 21. What was the purport of this sworn instrument? Was it or not what is usually known as a marine protest?

254 (Objected to by respondents on the ground that it is cross-examining upon subject-matter not brought out in direct examination; also because it is leading.)

Ans. It was.

X-int. 22. How long before the collision occurred did you, standing, as you did, on the canal-boat first notice that she was going to strike?

Ans. I did not know positively that she was going to strike at all. I was convinced she was going to strike about the time she did strike.

*Re-direct examination.*

Int. 18. Is the said marine protest or affidavit now in your possession or under your control, or of any of the claimants in this suit, or do you know where it is, or where it or a certified copy of it can be obtained?

Ans. It is not in my possession or control. It is not, to my knowledge, under the control or possession of any of the claimants in this suit. I do not know where the original is, but suppose a certified copy of it can be obtained at the notary public's office at St. Louis. It is impossible for me to get either the original or a certified copy of the same for the purposes of this examination.

255 (Witness here presents a list of the officers and crew of the steamer "Admiral Farragut" for that trip, on 8th March, 1866.)

Upon reading over the preceding, witness wished to make changes, as follows: In the 1st line on page 5 to interline the word "about." In answer to 9th direct interrogatory on same page witness has testified that "all the objects on the diagram are drawn on a scale of 40 feet to the inch;" and in so testifying witness meant that this scale only applied to the steamer and tow, the draw of the bridge, and the distance between the piers. The lower island, I think, is about 200 feet long, and, I think,

from 50 to 75 feet wide. A steamboat can pass through the passage between the two islands at high water. The position of the lower point of the lower island I think is correct, and the distance between the lower island and the main shore. The width of the river at the bridge is about 300 to 350 yards, and the distance from the bridge to the dock from 350 to 400 yards.

(Signed) JNO. F. NOLTE.

256 *List of officers and crew of Admiral Farragut.*

Cha's S. Ebaugh, captain.
C. H. Ebaugh, cub pilot.
Joe Bolejack, engineer.
J. F. Nolte, carpenter.
James Purdam, watchman.
Fred. Niemann, mate.
Bill Davidson, steward.
Thomas De Haven, cook.
M. Snow, cabin-boy.
George Schaffer, Ernest Bolle, } firemen.
John Kennedy, John O'Neil, } deck-hands.
John Fitz, John Kane, Mike McDonough, W. Dumphy, Pat Mulhowen, G. Murphy, Jim Ryan, W'm Mazlin, M. Murphy, Ed. Morris, } roustabouts.

257 *Deposition of George W. Meeteer.*

JAN. 29, '67.

My name is George W. Meeteer; my age is 30 years; residence, Meredosia, Illinois; occupation, I am running a saw-mill.

Int. 1. State whether you are acquainted with the canal-boat "Ajax," and, if you are, the circumstances under which you became acquainted with it; and, if you know, state particularly the condition of the boat, its plank, and timbers.

Ans. I suppose that is the boat lying in the Illinois River below the bridge. I know she is called that. I never saw the name on the boat myself while she is lying sunk. I am acquainted with her; I was aboard the boat some time the latter part of last May or the forepart of last June, if my memory serves me right, and on occasions since then. I examined the boat, and saw her condition at the place where I suppose she had been crushed when she came in contact with the bridge, and other parts about the boat. I examined her deck, her side-plank, her side timbers, her clamps, her stern, and the plank where the joined the stern. I examined on both sides of the boat; that is, her planks, clamps, side timbers, more particularly about the stern and forward of the
258 stern. I found a great many rotten side timbers, and the clamps was very much decayed and imperfectly patched up. I found her stern rotten, and could pick it with my fingers. The plank where they

were fastened on to the stern were decayed, and were detached from the stern. I found a number of decayed plank on the sides. I believe that is about as much as I examined. I mean I could pick portions of the stern off with my fingers. I was acquainted with the "Ajax" in 1863. I was there in the employ of Captain C. S. Ebaugh, buying and shipping grain. The captain of the boat at that time applied to me for a load of grain, but I declined shipping on the boat, because she had no inspection papers or inspector's certificate, and the insurance agent would not take any risk on her. Captain Ebaugh had his own open policy of insurance; and unless a boat had such papers or certificate we could not ship on the policy without permission from the agent of the insurance company.

Int. 2. From your said examination of the hull of the "Ajax," what, in your opinion, was probably her condition for soundness and seaworthiness on the 8th March previous and before the collision?

259 (Objected to by libellants.)

Ans. I should not judge the boat, from the unsoundness of her, to be seaworthy.

Int. 3. Was or was not the rottenness and unsoundness you speak of the result of lying sunk in the water from the 8th March next previous, or did it result from other causes? and, if so, state those causes.

(Objected to by libellants because it is leading, and because it calls for an opinion from one who has not been shown as acquainted with boats and their construction.)

Ans. I should consider the unsoundness to be caused by the wearing out of the material, which was liable to decay, and does decay and become rotten. Ship timbers are always decaying. It did not result from lying in the water sunk from the 8th March next previous. The decay was from age, having done its duty and worn out.

Int. 4. Have you any means of knowing what the age of the "Ajax" is? If yea, state your means of knowledge and the age.

Ans. I have known her since 1863, and by report for at least 10 years.

(Objected to by libellants, as far as hearsay goes.)

260 Int. 5. State what is the actual means of your knowledge as to her age.

(Objected to by libellants, because the witness has already stated as to his personal knowledge.)

Ans. It is customary, and often occurs, that steamboat-men in their conversations inform each other of the time when boats were built, their condition, capacity, and age; and I have been a steamboat-man and have learned the age of boats, their carrying capacity, &c., and during the time I was steamboating I was informed that the former name of the canal-boat "Ajax" was the "Nile," and that she was known to be running on the Illinois River in the year 1857.

(Answer objected to by libellants on the ground that it is entirely hearsay, and not admissible.)

Int. 6. Have you or not had any experience in the qualities of lumber and timber and in the construction of boats and boating? If you have, state what has been that experience.

Ans. I have superintended and had rebuilt a boat of my own, and have superintended and rebuilt boats for others. I have furnished and sawed lumber for the construction of boats. It requires in building boats the best and soundest lumber that can be had. Unsound

261 lumber would be rejected, and in furnishing lumber for building boats for other parties nothing but sound lumber would be received from me, as I have furnished lumber myself personally, and made it part

of my business. I was engaged on steamboats about 4 years, and acted as steamboat agent about 4 years.

Int. 7. From your knowledge of the "Ajax," what was her value on the 8th March, 1866, previous to her collision and sinking?

(Objected to by libellants.)

Ans. I would not want her at any price; I would fix her value at 200 dollars.

Int. 8. Are you acquainted with Capt. Charles S. Ebaugh; if you are, how long have you been acquainted with him? and, if you know, state what has been his character for sobriety, carefulness, and caution as a steamboat-man, and skill as a pilot.

Ans. I have known him about 9 years; never saw him drink any liquor in my life; his character for carefulness and caution is excellent, and he is considered as a No. 1 pilot.

JAN. 30, '67.

Int. 9. Are you acquainted with the Illinois River in the vicinity of Meredosia? If you are, state how long you have been ac-
262 quainted with it, and your means of knowledge.

Ans. I am acquainted with it; I have been acquainted with it about 8½ years; I had charge of a ferry-boat there about 2 years; during that time I had charge of a horse ferry-boat, a rope ferry-boat, and a steam ferry-boat; I have loaded a great many barges there with grain, merchandise, and produce; I have piloted the barges out to the channel and opposite shore, from the landing and both docks; I have been on steamboats when they have been landing and going out from the same place.

Int. 10. Examine the diagram "B B," and state your opinion as to its correctness.

Ans. My opinion is that the diagram is about correct. I think the location of the dock, according to Dunn's testimony, is too far north and too far east from the draw of the bridge; I don't think the position of the dock marked "Lower dock" is exactly correct.

Int. 11. Have you witnessed the manner of descending steamboats previous to passing through the bridge? If you have, state the course generally pursued by them during high water coming down the channel, and also from the upper dock.

263 I have witnessed them frequently; I have seen them come straight down, and I have seen them on a line with the bow marked on the abutment west of the turn-table of the bridge, and the stern on a line with about the centre of the small island at Meredosia; I have seen boats round out from both docks and go through the bridge, sometimes without stopping, and sometimes by stopping and backing up the river.

Int. 12. Do they or not ever take any other courses than those you have mentioned?

Ans. Their courses are governed by circumstances, from the direction of the wind, and speed of the current; I have seen them go through both sides of the draw, but I consider the west side the safest.

Int. 13. State as to the number, relatively, of safe passages and casualities of passing through the bridge.

(Objected to by libellants.)

Ans. I have seen boats going through the bridge without any tow and strike it, and I have seen them go through and not strike it; I have seen boats go through with a canal-boat or barge on each side without
264 slacking their headway; I have seen boats go through having

small and large tows have trouble, and have seen them go through without trouble; have been on boats myself when they were going through; sometimes it would take some time to get through, sometimes they would have no trouble at all; have been on boats when they struck going through. There are more boats go through there safe than strike.

Int. 14. From your experience in steamboats and the harbor of Meredosia, would it or not be possible for a steamer with a canal-boat in tow, landed at the upper dock, bow up stream, to come down in a direct line to the northwest corner of the drawbridge, when open, with her bows down stream?

Ans. She could not possibly do it.

Int. 15. State the reason why.

Ans. Because she would have to turn around to get there, and would have to go out in the channel to do it.

Int. 16. Look at diagram "B B," and state what you know of the currents prevailing there at high water, and the causes.

Ans. The land at the point on the west bank of the river is
265 from 20 inches to 2 feet higher than it is for a distance of from a half a mile to a mile above the point, and still farther up than a mile, and also higher than it is at and above the bridge. The river in high-water goes over the bank above the point, and returns at and above the bridge; and in case of the river declining, there is considerable current from west to east at and a short distance above the bridge. The current from west to east varies with the rise and decline of the river. When the river is rising it is not so strong as it is when the river is declining; that is, when the river is high.

Int. 17. When steamboats are passing through the draw, is it or not necessary for the draw to be wide open, or at right angles with the main bridge?

Ans. It is necessary.

Int. 18. Look at diagram marked "C C," and state whether or not the position therein represented correctly describes the drawbridge when [when] open for the passage of a steamboat on either side.

Ans. It is not. The bridge as it is shown here is not turned far enough, and should be straight with piling. Boats are apt to strike the draw if it should be in that position going through.

266 Int. 19. Look at the diagram again, and state whether the form of the piling at the north end of the bridge is correctly represented.

Ans. It is about right. The piling should be a little wider across the end of the water. It is rounding as represented on the diagram, but it has ribbons on it.

Int. 20. Describe those ribbons.

Ans. There are 3 rows of ribbons, in sections, around the piling, which come together at the ends in square joints. I have noticed that on the middle ribbon on the west side, near the north end of the piling, the ribbons form a joint there and at the curve of the piling. The joint of the 2 ribbons makes a corner protruding from the piling; that is, the ribbon does not form a curve with the piling on the west side at the north end, and creates a corner there which has been the condemnation of steamboats and steamboatmen for some time.

Int. 21. State from your knowledge of positions, would it or not be possible, or probable, for a man standing very near the centre of the draw or swing of the bridge when open, to see a boat at the upper dock, or on a direct line with the upper dock.

Ans. Yes, it is possible; and probable a man could.

267 Int. 22. What was the relative position of the middle ribbon and the surface of the water, on the 8th March, 1866?

Ans. I do not now remember the stage of the river on that day, and do not remember whether the ribbon was under water or not; I know the river was high at that time.

Int. 23. What are the relative positions of the middle ribbon and the surface of the water at this time, at the present stage of water?

Ans. The river is now between 12 and 13 feet below the lower edge of the middle ribbon. The water is now about 8 feet deep, I think, in the channel, at the west side of the piling, at the draw. The east passage is shallower.

*Cross-examination.*

X-int. 1. State how you have been employed during the last 2 years.

Ans. I have run a saw-mill during that time, and that is my present business; have carried on a saloon business in that time, and have acted as a steamboat agent during that time.

X-int. 2. How long did you follow those several occupations?

268 Ans. I run a saloon all the time; a mill all the time, and acted as steamboat engine when navigation was open, and the steamboat was running that I was agent for.

X-int. 3. Have you ever acted in the capacity of pilot on the Illinois River, and have you ever piloted a steamboat and tow through the Meredosia bridge at high water?

Ans. I have piloted steamboats when the pilot was standing by, and, on occasions, when he was not standing by. I have piloted a steamboat through the bridge, but not with tow. There was no other pilot with me at this time.

X-int. 4. Did you ever have your license as such pilot?

Ans. I have not; but if I had continued a short time longer on the river, should have applied for one.

X-int. 5. How many times have you acted in the capacity of pilot?

Ans. I cannot tell. When I was on the river I was more or less at the wheel all the time, with the view of becoming a pilot.

X-int. 6. How long did you run on the river, on what boats, and in what capacity?

269 Ans. I was on the river during four seasons of navigation, and at various times afterwards. When I was not employed on the boat it was in 1858, 1857, 1860, and 1861, the entire seasons of navigation of those years, except the fall of 1861. I run on the river part of that fall, but was not employed on any boat; I was endeavoring to learn the river; I was employed as clerk on the boat during those 4 seasons; I was on the "Little Martha," a tow and freight boat; the Martha No. 2," the "Progress," the "Orion." These were all freight and tow boats; that is, towing their own barges, or those they hired.

X-int. 7. What did you do in 1862, 1863, and 1864?

Ans. I was in the grain and merchandise business at Meredosia, in 1862, 1863, and 1864. In 1864, from Jan'y 27, I was running a saloon and saw-mill, besides the grain and merchandise business.

X-int. 8. When was the bridge at Meredosia built?

Ans. I think it was commenced in 1859, and the 1st train of cars run over it in the spring of 1861.

X-int. 9. State the names of your employers on the steamers you have above named.

Ans. Captain Ebaugh on the "Little Martha," "Martha No.
270 2," and "Progress;" Captain McEvers on the "Orion."

X-int. 10. How long were you on the "Orion?"

Ans. I would be safe in saying 2 weeks.

X-int. 11. What steamer was it that you piloted through the Meredosia bridge, at high water.

Ans. The only name I ever saw on the boat was the "Owl."

X-int. 12. What sort of a boat was she, and under what circumstances did you pilot her through the bridge?

Ans. She was a steam ferry-boat. I went to Naples at different times for coal, and went on several occasions with pleasure parties.

X-int. 13. Was or not this ferry-boat employed in running across the river at Meredosia; and was or not she the boat that you have before testified to, when you said you were employed in running a steam ferry?

(Objected to by respondents, because leading. Objection withdrawn by respondents.)

Ans. The boat was used for the purpose of ferrying, for towing, and for any business that she could be put to profitably. She is the same
271 boat that I have before testified to. I will here add that I had the superintending of the boat; I only piloted her myself occasionally. I don't suppose there would be a day but what I would pilot her across the river. We did not have any particular place for to land this ferry. The boat was so constructed that we could land anywhere between the dock and the bridge. It was a ferry running between the east and west shore above the bridge; sometimes we would cross below the bridge.

X-int. 14. State what was the distance from the upper dock at Meredosia to the west shore proper.

Ans. I should say about 350 yards.

X-int. 15. What is the distance from the bridge to the upper dock?

Ans. I should think about the same distance, perhaps not so far; about 300 yards from south end of drawbridge when open.

X-int. 16. What is the distance from the bridge to the "point" on the diagram "B B."

Ans. I don't know. It is my opinion that it is about 250 yards. The width of the river I have measured, but I have never measured this distance.

X-int. 17. What is the distance from the end of the west pier,
272 the one the draw rests on when closed, to the west bank of the river?

Ans. I should think about 100 feet.

X-int. 18. Look at diagram "B B," and state if the curve on the west bank, as there shown, is about correct.

Ans. I think it is about correct.

X-int. 19. Have you ever been employed in any capacity on or about Meredosia bridge? If so, state in what way.

Ans. I have never been employed on the bridge. I have furnished piles, ties, and ribbons for the construction of it. I furnished these in 1866.

X-int. 20. How do you obtain the knowledge of minute details in connection with said bridge, as testified to in your direct examination?

Ans. By personal inspection and measurement, and having been frequently on the bridge.

X-int. 21. Do you mean to be understood that the distance, as testified to by you, of the middle ribbon from the surface of the water, is from personal measurement?

Ans. I stood alongside the man that held the pole and saw it measured. This was on yesterday morning.

273 X-int. 22. Have you, during your employment as aforesaid, on steamboats, ever known personally of any losses occasioned by said steamers colliding at the bridge? If so, state circumstances.

Ans. I know of no total losses while I was on the boats. The "Progress" struck the bridge once while going through in the night, and tore away part of her guards. This was the only collision that occurred while I was on the boat. No serious accidents occurred at all while I was on the boats.

X-int. 23. Do you know, or can you approximate to, the number of passenger steamers, or freight steamers, or steamers with tows, that pass through the bridge during a reason of navigation?

——. I should think there would be an average of about 3 each day going down. In the spring of the year there are a great many more boats running than when the river is low. The season is about nine months.

X-int. 24. State how many collisions occurred in the year 1866, by which total losses resulted, to your personal knowledge, at the bridge?

Ans. The "Ajax" was sunk. There was an ice-boat sunk. The cargo was a total loss. I don't know of any other.

X-int. 25. State how, upon examination, you found the "Ajax"

274 to be damaged by the collision.

Ans. She lies with her bows down stream, with a large hole on her larboard side, not far from the stern. I don't think I could give the exact dimensions of the hole. It was about one foot wide and 20 inches long.

X-int. 26. What was the stage of water when you made such examination?

Ans. I should think about 3½ feet.

X-int. 27. How far down the side of the canal-boat was the hole you speak of?

Ans. It was about 1½ feet from the deck.

X-int. 28. At the time you made this examination, was this all the damage you found that was caused by the collision?

Ans. I found the ends of the plank detached from the stern, and I supposed that resulted from the collision.

X-int. 29. Did you examine the timbers of the canal-boat at the hole you have spoken of; and, if so, how did you find them?

Ans. I examined the side timbers and found some entirely rotten and some very much decayed. I did not see any timbers there I considered good.

275 X-int. 30. Through the hole you have mentioned, how many of her timbers did you have an opportunity of examining?

Ans. I did not examine her through the hole; I examined her from a hole in the deck, from where some plank were off front and aft of the hole in her side.

X-int. 31. How many of her timbers did you examine?

Ans. I should think about 20.

X-int. 32. Was or not the boat full of grain?

Ans. Not entirely full at the stern.

X-int. 33. How did you get an opportunity of examining her timbers to the extent of about 20?

Ans. From the reason of the deck-plank being off. I should think they were off for about the distance of 25 feet.

X-int. 34. How wide a hole was this in the deck?

Ans. For about 3 feet from the side of the boat, on deck.

X-int. 35. Were not her side timbers crushed in where she collided?

Ans. They were.

X-int. 36. How many?

Ans. I did not count them; some of them were broken entirely
276 apart, and some almost in two.

X-int. 37. Did you make any further examination of the boat than you have already stated in this deposition?

Ans. I did not.

X-int. 38. How did you get an opportunity to examine her starboard timbers?

Ans. From portions of her deck being gone on the starboard side.

X-int. 39. To what extent were portions of her deck gone on the starboard side?

Ans. Sufficient for a person to see down, or get down on to the grain in the hold.

X-int. 40. Did you get down on the grain and examine her timbers?

Ans. I did not.

X-int. 41. Did you or not examine the inside lining of the boat farther than such examination as you were enabled to make from the deck of the boat?

Ans. I laid down on the timbers across the deck, and reached down and examined the timbers and the clamp with the end of my knife.

X-int. 42. How did you examine the plank on the outside of
277 the boat?

Ans. With my knife, by being in a yawl.

X-int. 43. Was or not the grain in the boat swollen, rotten, and offensive to the smell?

Ans. I saw the grain in the boat, some in bulk, some in sacks, very much decayed and offensive to smell; and should think from the distance from the deck to the grain in the boat, about the places where the plank were off from the deck from the afterhatch to the stern, that there had been some grain taken out of the boat before I made any examination.

X-int. 44. How far forward were you enabled to make an examination of her timbers, on either side.

Ans. I think from the stern to the afterhatch. I disremember whether to the aft or fore end of the afterhatch. There were plank taken from the deck here and there promiscuously, more particularly about the stern and afterhatch, on the deck along close to the side.

X-int. 45. At the time of this examination, how much of her sides were out of water?

Ans. I should think about 30 inches to 3 feet.

X-int. 46. Was any person present with you at this examination? and, if so, state who.

278 Ans. There were two others: Mr. D. H. Lollis and J. L. Pike.

X-int. 47. At whose request did you make this examination, and what compensation, if anything, did you receive for the service?

Ans. By request of Captain C. S. Ebaugh. I was offered no compensation and charged none.

X-int. 48. Have you had any conversations with Captain Ebaugh or Frederick Nolte, since that examination, as to your views in reference thereto?

Ans. I have not. I made an affidavit with D. H. Lollis and J. L. Pike, before John Walihan, a justice of the peace in Meredosia, in reference to our examination of the canal-boat.

*Re-direct examination.*

Int. 24. In your statement of the length of that part of the bridge from the west pier to the western shore, do you intend to be understood that you spoke from actual measurement?

Ans. I do not. I never measured it, but suppose it to be about the distance I have said; I am not positive about the distance.

*Re-cross-examination.*

X-int. 49. Do you mean to be understood that you are not
279 sufficiently acquainted with the west pier of the bridge to state accurately, or to approximate, the distance between the end of the west pier and the west shore?

Ans. I ought to know all about it; I have been between the pier and the shore in a boat; I have walked across and ridden across it. I don't think it is far from 100 feet; it may be more or less.

(Signed) GEORGE W. MEETEER.

*Deposition of Charles W. H. Clark.*

JAN. 30, '67.

My name is Charles W. H. Clark; age, 31 years; residence, Beardstown, Illinois; occupation, steamboat cook.

Int. 1. State whether or not you were on the Farragut on her downward trip, March 8th, 1866, and on the trip up.

Ans. I was.

Int. 2. State whether or not on that trip, or at any subsequent time, you held conversation with Charles Clark concerning the canal-boat "Ajax;" if yea, state what the conversation was and when it took place.

(Objected to by libellants.)

280 Ans. I don't think I held any with him particular, none between me and him. That morning after the boat sunk, we were all setting around the stove and talking about it, and in the conversation I heard Mr. Clark say (I mean Capt. Clark) that when the boat was about the length of her above the bridge, that she was in good shape as he ever saw a boat to go through. They were all talking there, and then Mr. Clark spoke, as near as I can recollect, something about the current, that it brought them around all at once.

(Signed) CH'S W. H. CLARK.

*Deposition of John L. Dowler.*

JAN. 30, '67.

My name, John L. Dowler; age, 32 years; residence, in Beardstown, Illinois; occupation, pilot on the Illinois River.

Int. 1. How long have you acted as pilot on the Illinois River?

Ans. About 11 years.

Int. 2. With whom did you learn piloting?

Ans. With Capt. Ebaugh, on his boat, with his consent, and through him.

281 Int. 3. State whether, as such pilot, you have a knowledge of the river in the vicinity of Meredosia, and the railroad bridge; and, if yea, state particularly a description of the current there at high water, and the manner of the passage of steamboats through the drawbridge.

Ans. I have a knowledge of the river at said bridge and at Meredosia as such pilot. The current there, at high water, runs quartering from the point towards the opening in the draw; consequently we have to run as close to as possible without hitting the starboard or right-hand pier going down, in order to get through with safety, if it be possible. I have went through many times with safety, but have struck the bridge many times, but never have done any serious damage. The Meredosia bridge is the most dangerous bridge on the river; has done more damage to floating property than any other one bridge, in the same length of time, since it was built.

Int. 4. State more particularly and descriptively the action of this quartering current upon boats, or any other cause of danger in your knowledge.

Ans. A boat in inclined to drift invariably towards the draw by the action of this cross-current. By the draw I mean the piling
282 under the drawbridge. When you get the head of the boat near the west pier, the action of the current on the stern of the boat draws her invariably to the piling under the bridge.

Int. 5. Is there any regularity in the velocity of said quartering current, and can a pilot calculate, with any certainty, as to the effect it will have on his boat?

Ans. The current is irregular; it is owing to the stage of water. He can calculate with certainty the effect it will have on his boat, for this reason, that the stronger the current the more he will keep to the right, or west, going down; but at no stage of water, high or low, but what you will have to vary according to circumstances, such as wind from all points of the compass, and will have to take into consideration the same. I mean that we would not enter the bridge at all times in the same manner. It depends upon which way the wind blows; a strong east wind will help to counteract the effect of the current on the boat; that is, it will in keeping the boat from drifting towards the piling under the bridge.

Int. 6. Can you state, from your own knowledge, what the velocity of this quartering current was about the 7th or 8th March, 1866, as compared with other times?

283 Ans. The current then at the bridge was, I think, about 2 miles or 2½ miles an hour; I mean right in the draw, just as you enter the bridge. It was stronger at that time than I ever saw it before.

Int. 7. Are all the circumstances affecting a boat on its downward passage through the bridge always under the control of the pilot, and can a pilot at any time during the existence quartering current, be sure of a safe passage through the bridge?

Ans. These circumstances are not always under the control of the pilot, and he cannot be always sure of a safe passage through the bridge during the existence of such current. I form my opinion on this assertion, from the number of times I have struck the bridge and seen others strike.

Int. 8. State your own experience, as a pilot, as to the dangers in passing through this bridge both in going down the stream from above the point and from the Meredosia landing.

Ans. My experience as a pilot through the Meredosia bridge, when they commenced building the abutments or stone piers, and the one especially that the bridge now rests on, at the time of its con-
284 struction, had a few piling on the upper side of it, and in passing down through the bridge, I had invariably struck them often, in trying to run straight through, by being drifted on them by the cross-

current, which experience taught me that it existed, and I found that I had to keep farther to the west shore and closer to the west pier, in order to get through, and when the piling that is now built running the whole length of the draw, I had to keep still nearer to the west shore and west pier. If I was coming down the river with a boat, and had one barge, in order to make the passage more safely through the bridge, I would want it on the larboard side. My reasons are that if I got out of shape just before entering the bridge, by stopping the engine the headway of the barge would draw the steamer in shape, thereby lessening the risk or danger of striking. If I should have it on the other side and should happen to get out of shape just before entering the bridge and would have to stop the engine, with the cross-current and barge on the starboard side, would draw the steamer in collision with the bridge; or if I reversed the engine and backed the boat, it would be the same;
285 that is, if this should happen just as the boat is about to enter the bridge. My experience in starting out with a steamer and three barges from Meredosia landing above the bridge, have got out in the river from the landing many times with the aid of the engines and the use of poles, shoved her round, and got her in shape to go through the bridge under adverse circumstances and went through safely, with the exception of one trip, when I started out as usual from the same landing, and everything pertaining to the safety of a passage through the bridge seemed favorable, but with the same precaution in order to get through safely was all useless. In spite of all my efforts she came down broadside into the bridge, barges, tow-line, steamboats, and all, jammed in there tight as could be, so tight that we had to take a hawser to the head of the piling under the draw, and take it to the steam capstan, and with the assistance of it we got out. One paddle-wheel being in such a shape we could not use it. There was no material damage done, but it was a tighter squeeze than I expected at a 3-foot stage of water. If it had been the same stage of water that it was on 7th March last, it would have been a serious affair.

286 JAN. 31, '67.

Int. 9. Is it usual for pilots to wait for daylight before passing through the bridge?

Ans. It is in some cases. I have laid at Beardstown with the "Katie Bruner," and left that port—Beardstown—in time to get to the bridge about daylight. This is the only freight-boat that ever I was on that done so. I have been on tow-boats which have laid up often at the bridge waiting for daylight, and have went down often with moderate tows before daylight, at certain stages of water.

Int. 10. Is it usual for such boats as the "Admiral Farragut" to wait for daylight before passing through the bridge?

Ans. It is, under certain circumstances, such as, if she should happen to be there an hour before daylight freighting, she would wait; but if there should be too much time lost by waiting, they would take the risk, as it is most the universal practice with the majority of boats, to run through without waiting; I am speaking of freight and passenger boats. The "Farragut" is both a freight and passenger boat. I never knew a boat of her capacity with barges in tow to the extent of 3 to lay
287 up for daylight. It is not usual for freight and passenger boats like the "Admiral Farragut," with one, two, or three barges or canal-boats in tow, to lay up for daylight before passing through the bridge; but these freight-boats, tow-boats with tows, having not sufficient power to check themselves up, are more likely to lay up and wait

for daylight to go through the bridge. In the first part of this answer, I was think of boats not having sufficient power to check themselves up in going through the bridge, and not such boats as the "Admiral Farragut."

Int. 11. From your experience as a pilot and of the harbor of Meredosia, would it be possible for a steamer with one canal-boat in tow, at a stage of water such as was on 8th March, 1866, having landed at the upper dock, bow up stream, to go down on a direct line to the northwest corner of the piling under the drawbridge, bow down stream?

Ans. She cannot, because she would have to get her bow pointed somewhere to vary according to circumstances, in order to hit the piling. That is, she would have to get turned around, and would have to keep to the right considerable distance to counteract the cross-current, in order to accomplish the purpose. You would have to go way to
288 the right after you had got her around, in order to counteract the effect of the current in order to get through the bridge. If she should attempt to come on a straight line from the upper dock, she would be apt to strike the east pier, as marked on the diagram. The cross-current in the bridge and above it would have a tendency to drift her on the east pier.

*Cross-examination.*

X-int. 1. How long have you been a regularly-licensed pilot on the Illinois River?

Ans. About 11 years.

X-int. 2. During that time about how many times have you, during each season of navigation, personally piloted down through the Meredosia bridge with steamers having and not having tows?

Ans. I could not safely say; 25 times each season since the bridge was built.

X-int. 3. During that time how many actual losses by colliding with the bridge have been made under your personal pilotage?

Ans. None.

289 X-int. 4. You have testified that you have struck the piling many times but without causing much damage. How do you account for that fact?

Ans. Practice.

X-int. 5. Can you or not further account for it by the exercise of care, diligence, and skill?

Ans. Yes, sir.

X-int. 6. Have you or not during that time, while attempting the passage of the bridge, found yourself in danger of colliding with the piling; and, if so, how would you on such occasions avert it?

Ans. Yes, sir; I have. I avoided it by backing out when the boat was in shape so to do; when under other circumstances I have been in danger when I could not back out, and could not avoid a collision with the bridge, but at those times I never done any damage, notwithstanding I was out of shape. But if this circumstance should have occurred during a high stage of water, it would have resulted in serious damage, this being the first time that I got out of shape and could not avoid a collision with the bridge, neither by backing nor going ahead, because the boat and barges was coming sideways down against
290 the bridge. I refer to the time spoken of in my direct examination, when I got jammed in with 3 barges.

X-int. 7. Is this the only time, during your experience as a pilot, you have met with serious trouble at the bridge?

Ans. Yes, sir.

X-int. 8. You have stated, in answer to the 3d direct interrogatory, that, in order to make a safe passage through the bridge at a high stage of water, you have to run as close to as possible without hitting the right-hand pier going down. Please state more particularly how you mean to be understood?

Ans. I mean that it is necessary, if possible, to get in shape in order to come in with the head of the boat as close as possible to that west pier, and to avoid as little swinging as possible, to keep the stern of the steamer off from the piling under the draw.

X-int. 9. What should be the relative position of the stern of the steamer with the bow when you are keeping her bow so near the west pier, in order to counteract the swinging effect of the current on the stern?

Ans. It is owing to circumstances; for instance, the boat, in coming down, having her head close to the pier, her starboard side would
291 be about on a line with the side of the west pier, or a little to the left, just enough to miss it; even then the stern of the boat would be pretty close to the lower or centre part of the piling, under the bridge, before she got through; but if a boat, coming down, should get too far to the east, she would have to come headed way to the west of the west pier in order to get close enough to it, on account of the cross-current; her stern then would be farther to the left than in the case before mentioned, but the result would be the same, on account of having the pilot-wheel hard down to the larboard, which would counteract the drifting to the same extent as in the other case.

X-int. 10. You have stated, in reply to the 5th direct interrogatory, that circumstances, such as wind from all points of the compass, would tend to vary the exact way in which the bridge should be approached. Do you, as a careful pilot, always take these different circumstances into consideration before attempting the passage of the bridge?

Ans. I do.

X-int. 11. State at what time in March, 1866, you made your
292 first passage down the river, and through the bridge; state the circumstances attending it, and whether or not you made the passage safely.

Ans. I don't know the exact date, but it was 2 or 3 days after the "Farragut" went down, at the time of the loss of the "Ajax," that I took the steamer Storm, with 16 canal-boats, drawing about 5 feet, and 3 coal-flats, drawing 3½ or 4 feet, making a number of 19 boats in tow; the tow was about 400 feet long, and the width of 5 canal-boats; I laid up for daylight, in order to go through the Meredosia bridge; and, in broad daylight, come down to the point, just above the bridge, stopped the engine, commenced backing with a full head of steam, in order to get her checked before we got to the bridge, and with all the backing, in order to check up, was in vain; she came down to the bridge, not being in shape to enter, lacking 4 feet, the head of a coal-flat forward resting against the west pier, and the whole tow was in the act of swinging towards the piling under the drawbridge, which I saw if the steamboat had not the power to relieve herself from the west pier before she struck the piling under the bridge would cause great loss; consequently, of two evils, I chose the least, and changed my
293 rudder hard down to the starboard, and backed the tow to the west, thinking that, if any loss should occur, the probability would be less. After I got her pretty close to the west shore, she, the steamer,

commenced going up the river backwards; then I reversed my rudders to the east. When I got her straight with the shore, the forward tier of flat and canal-boats were below and under the west span of the bridge; I kept on backing until I got the whole tows above the bridge, and managed and manœuvred her until I got her in shape; after I got her in shape, backing her slow, and an unusually strong current while backing, she floated in the west passage; after my starboard forward boat cleared the west pier, the steamer and tow went through, with the usual manœuvring, without touching, after I got in shape so to do; but I think all the time occupied, in getting through the bridge, was about two hours, and got through without any damage.

X-int. 12. You state, in answer to the 8th interrogatory, in direct examination, that, at one time, while coming down the river with 3 barges, you got jammed in the bridge. State whether on this occasion
294 you started from the upper or lower Meredosia dock.

Ans. We came down and landed at the first dock above the Meredosia bridge, it being the low-water landing or lower dock. You can't get to the upper dock in low-water; that is not known as the upper or distillery dock.

X-int. 13. How much north of this low-water landing is the upper dock?

Ans. I think it must be about 250 feet or more.

X-int. 14. How far is the upper dock from the Meredosia bridge?

Ans. I should think it was from 4 to 5 hundred yards; it may be less.

X-int. 15. At a high stage of water would or would not the difficulties be greater to effect a safe passage through the west draw, in starting from the low-water landing, than from the upper dock?

Ans. The danger would be greater.

X-int. 16. State the length of time that you have been employed on the "Admiral Farragut" as pilot, and, if at different times, state fully.

Ans. I should think it was about 3 months altogether; I was on her twice, I think, at different seasons.

295 X-int. 17. How does she class, as to capacity and power of her engines?

Ans. First class.

X-int. 18. Is she or not manageable and readily handled, under ordinary circumstances?

Ans. She is.

X-int. 19. Is or is not the force of this diagonal current broken by the piling under the bridge; and is or is not the force of current in the last passage very much less on that account?

Ans. It is a little less, I think. The force of the current is broken to some extent, to the extent as the piling is across the current.

X-int. 20. From the fact of this diagonal current striking the piling on the west side, at the north end, does or does not the direction change to a course more southerly, and down through the west passage?

(Objected to by respondents, because it is argumentative and irrelevant, and assuming facts not in proof.)

Ans. It does have the effect, to some extent, to change the effect of the current, but not the direction.

X-int. 21. Can you approximate to the number of passages made by steamers, freight and passenger, and steamers with tows, down
296 through the Meredosia bridge, during a single season of navigation? State as nearly as you can.

Ans. I should say about 300, allowing the season of navigation to be 10 months.

X-int. 22. You state that some pilots wait for daylight in order to pass through the bridge; state why they wait for daylight.

Ans. For these reasons: The boat may not be safely managed, and may not have power enough to get out of danger if they should get out of shape, which would be more likely to occur in the night; although many that neither the power nor chance to get out of danger, if they should get out of shape, take the chances after night. I refer to tow-boats generally, and to boats of lesser power.

X-int. 23. State whether in your experience on the Illinois River, since the building of the Meredosia bridge, you are acquainted with the number of total losses that have occurred there. If so, state how many.

Ans. I should think that there is about perhaps between six to ten, more or less, that I heard struck the bridge and sunk.

X-int. 24. Are you acquainted with the circumstances and facts connected with their loss? and, if so, state all you know in regard to
297 the tow-boats so sinking them, as to their capacity, power, &c., and as to the pilots who had charge of the same at the time of such losses.

Ans. I am not acquainted with the facts and circumstances of their loss, as regards under whose control the steamers were at the time of such losses; I do not know what boats they were that sunk them; the only knowledge I have of the boats that were destroyed is seeing them after they were sunk, and by hearsay that they struck the bridge.

X-int. 25. Are there or not a number of pilots on the Illinois River who run up as far as the Upper Meredosia landing, or farther, only at high-water, and is it not a fact that a majority of these losses have occurred under their pilotage?

Ans. There are a number of them; I could not say whether the majority of losses occurred under their pilotage or not, as there are a number of high-water pilots; I don't know.

X-int. 26. Do you mean to be understood, in your answer to the 23d interrogatory, that there may have been other losses at the bridge, of which you know and have heard nothing? If not, explain.

298 Ans. There might have been more or less. I know we see the wrecks scattered around, sometimes 2 or 3 of a spring, which were reported to have been sunk; some springs not any.

X-int. 27. Are you acquainted with the regular pilots known as low-water pilots, on the Illinois River, navigating said river above and through the Meredosia bridge?

Ans. I am.

X-int. 28. State if any of the losses which have occurred at said bridge since it was built have occurred under either of their pilotage; and, if so, which, and under whom?

Ans. All I know is by report; two cases, the "Ajax," Captain Ebaugh, and a barge, with Hardin Colter, pilot of the "Schuyler;" the others I don't know.

X-int. 29. Do you know a pilot named W'm O'Harra, and is he a regular low-water pilot?

Ans. I know him; he is a regular low-water pilot.

X-int. 30. What wages do regular low-water pilots command during a season of navigation on a steamer such as the "Farragut?"

Ans. I get 200 dollars per month. The high-water pilots, some of them, work pretty cheap.

299 X-int. 31. You stated, in answer to direct interrogatory 9, that at some stages of water you would go down with a tow before daylight. At what stages would you do so?

Ans. At all stages, if we should have a small tow.

X-int. 32. Is or is not the power of the "Farragut" greater than that of the generality of tow-boats on this river?

Ans. She has more power than the generality of tow-boats on this river.

*Re-direct examination.*

Int. 12. Do you consider the striking of the piling under the draw-bridge by a descending steamer, or her tow, during the prevalence of [prevalence of] the cross-currents, as a proof of the careless or unskillfulness of her pilot?

Ans. No, sir; it is not proof of carelessness or unskillfulness of her pilot.

Int. 13. Which do you consider the safer passage, the east or west, in high water, during the prevalence of the cross-current, for boats going down through the bridge from the upper dock?

Ans. The west passage.

300 Int. 14. You have spoken of low-water or 1st-class pilots, and high-water or 2nd-class pilots, navigating the Illinois River, above and below the bridge. State, if you know, to which of these classes Captain Charles S. Ebaugh belonged on the 7th and 8th of March last; and how did he rank in that class?

Ans. He ranked 1st in the 1st-class pilots. His character for sobriety, carefulness, and skill is good.

Int. 15. Do you wish to be understood as saying, in your cross-examination, that there have been but 6 or 10 losses altogether by the bridge since its construction, or are these all that you now recollect?

Ans. I don't pretend to say that is all; there might be more than ten.

Int. 16. Besides the losses you have spoken of, have or have not there been lesser damages to steamers and tows caused by striking the bridge?

Ans. There have been more struck that did not sink than there were that struck and did sink. I have known slight damage caused by striking.

Int. 17. State, if you know, what is the relative power of the "Farragut" and "Storm."

Ans. I don't know the exact dimensions, but would think the "Storm's" machinery is equal to double that of the "Farragut."

301 The power of the "Storm" is double that of the "Farragut."

*Re-cross-examination.*

X-int. 33. Have you ever taken the east passage through the bridge; and, if so, under what circumstances?

Ans. I have, under unavoidable circumstances; and at other times to experiment on the action of the current on the boat. The unavoidable circumstances were a strong west wind, with a line out on the west shore to keep me from drifting too far past the head of the piling under the bridge; the wind blowing at a tremendous gale from the west, could not, by the assistance of the engines, get her in shape in the west shoot, owing to the cross-current and heavy wind.

X-int. 34. State how many 1st-class pilots there are on the river.

Ans. I suppose there are between 12 and 15.

X-int. 35. Can you not refresh your memory, and state how many losses have occurred at the bridge since it was built?

Ans. It may be more or less than 10, but I don't think it varies far from it.

(Witness wishes to be understood as intending to say that if a steamer gets safely by the north end of the piling far enough, say ⅔ of
302 her length, so that her stern will not swing round with the current, and is checked up so as not to strike hard, she will then slide along the piling through the bridge safely; and in order to do this, her stern would have to be straight with the current is just before entering the bridge.)

(Signed) JOHN L. DOWLER.

*Deposition of Thomas H. Wills.*

JAN. 31, '67, and FEB. 1ST, '67.

My name is Thomas H. Wills; age, 38 years; residence, Beardstown, Illinois; occupation, steamboatman and captain of the steamboat "Gem," and am a licensed pilot on the Illinois River. I have been a licensed pilot on the river for not quite 2 years. I have been steering boats occasionally for 6 or 8 years. I was employed on the river as 2nd clerk on a steamboat, and during that time I was steering, learning the river; I acted as 1st clerk, and afterwards became interested in a steamboat as part owner, and became captain. During all this time I was steering, more or less, learning the river. During the time I speak of here I was on the Illinois River. Portion of the time we went through, a
303 regular passenger packet to Peoria, occasionally through to La Salle from St. Louis. I have steered some on the Upper Mississippi, a little on the Lower, but not as a licensed pilot. I have been familiar with the harbor at Meredosia about 10 years. I have worked on different boats, in capacity of 2nd clerk. I was on the "Orion;" on the "Umpire, No. 3." The "Orion" was a freight and tow boat; the "Umpire," a passenger boat. I was on the "Belle Peoria"—she was a passenger boat; also on the "Sam. Gaty"—she was a passenger boat; on the "Katie Bruner," a freight boat; on the "La Salle," a passenger boat. I was on the "Belle Peoria" both as 1st and 2nd clerk at different times. I then bought ½ interest in the steamer "St. Joseph"—she was a freight-boat; I was captain on her. Those freight-boats that I was on all towed barges—the "Orion," the "Katie Bruner," and "St. Joseph." I bought the "St. Joseph" either in 1862 or 1863, and became her captain at that time. I used her part of the time exclusively as a tow-boat on the Illinois River, towing canal-boats. The next boat was the "Ingomar"—she was a passenger boat; I also was captain of her. The next was the "Diana"—she was a tow-boat between St. Louis and Memphis; I was captain on her. Then the "Comet;" we used her as a freight and tow boat, when we first bought her, on the Mississippi
304 and Illinois River; I was captain of her. We fit her up then as a passenger boat, and run her as a daily packet between St. Louis and Alton. The next one was the "Gem"—she is a passenger and freight boat; I am captain of her. I own an interest in the "Gem." I owned an interest in all the boats I have mentioned, of which I was captain. All the boats that I have named above occasionally towed barges.

Int. 1. Are you acquainted with the Illinois River in the vicinity of Meredosia? If yea, examine diagram marked "B B," and state whether that is or is not a correct description of the same.

Ans. I believe that to be correct, except the line marked "Course of the Farragut, according to testimony of Dunn," which I think is too far east of the island. I mean the dock, as designated by Dunn.

Int. 2. Were you on the river on the 7th and 8th March, 1866; and, if so, in what capacity?

Ans. I was not; at that time I was running between St. Louis and Alton in the capacity of captain and pilot.

Int. 3. Are you or not acquainted with the currents which prevail at and above the Meredosia bridge in high water?

305 Ans. I am.

Int. 4. State a description of those currents, their action upon descending boats, and the manner of piloting a steamer, with or without tows, through the bridge during high water.

(The proctor for the libellant, in order to save time and expense, will admit that there is a diagonal current at high water, say March 8th, 1866, running across and along the west bank of the Illinois River, with a velocity variously estimated at 2 to 2½ miles an hour, whose tendency is to drive vessels and boats in the direction of the piling under the bridge, and that in the navigation of said river, at said bridge, accident and loss will certainly result unless care and diligence are used, and the precaution taken to hug the west bank of the river, in order to have the necessary leeway to pass through the bridge, without being swung against said bridge, by said current.)

Ans. My plan for taking a boat through there is, after I get a short distance below the point, probably ¼ the width; that is, the width of the river, from the west shore. I then hold to the right of the west pier, until I come, I might say, within a few yards of the same; then I gradually begin to hold her over to the larboard; that is, have

306 her head swung to the larboard, making my calculation so as to just miss the west pier with the starboard side of the head of said boat. Then if I succeed in coming within a few feet of the west pier—some 5 or 10 feet even—I continue to hold her to the larboard, in order to have the rudders counteract this cross or diagonal current, which takes effect upon the stern. I wish it to be understood that though this is my plan for getting a boat through, I don't always succeed in getting her in the position stated above, and that I designed having her in; and when I find that I have missed in my calculations and see the boat is likely to get into trouble, I sometimes stop her and set her to backing; and at other times I will give the signal to the engineer to go ahead stronger. We sometimes have to decide very quick which course we think best to pursue, whether to go ahead strong, or to stop and back her. As to which we would do, would depend upon the shape we conceived the boat to be in; and upon which side the barge, if we had any, was on. If I had a barge or canal-boat upon the larboard side, when I got within a few rods of the piling, or passage through, and found I was drifting or flanking towards the left-

307 hand pier or piling, I would probably think it best to work her strong ahead, knowing that I was too near the piling to stop and back her; from the fact that a steamboat will generally back her stern towards the barge, and would likely cause her to strike the pier much harder.

FEB. 1, '67.

In case I had a barge on the starboard side, and came down within a few rods of the pier or draw, and found my boat not to be in proper shape, and drifting towards the larboard pier, I would be likely to stop my engines and start the steamer to backing; whereas, if the barge was on the other side, and the boat in the same shape aforesaid, I would be likely to not stop the engines but endeavor to get her as near to the west pier as possible.

Int. 5. Where a steamer has but one tow, say a canal-boat, which is

the better and safer side, if either, of the steamer for the tow to be on in descending through the bridge?

Ans. I prefer to have it on the larboard side, from the fact it would enable me to get the head of the steamboat nearer the west pier; and the canal-boat, being much shorter than the steamer, and usually is fastened so as to extend some 20 feet ahead of said steamboat, or
308 even with said steamboat, or between the two positions, this leaving the stern of said steamboat entirely free, and thereby giving some 18 or 20 feet more room for flanking before she would strike the pier.

Int. 6. State the proper manner and course for a steamer with a canal-boat in tow on her larboard side, the head of the two being even with, or a few feet ahead of, the bow of the steamer, having landed at the upper dock, bows up stream, to proceed down from thence through the west passage of the bridge.

Ans. My plan would be to round out, that is, to come ahead, passing between the foot of the island and the wreck of the Martha, in high water; from thence on towards the point on the west shore, or below the point, aiming to get her bow headed down stream, or a little to the right of the west pier; and, after arriving at a short distance below the point, then endeavor to get her about ¼ the width of the river from the west shore; then, if I succeed in getting her in that position I would have her, as I usually aim to when I have not landed at said Meredosia dock, and then I would proceed as before stated. But in case said boat did not handle in coming out from said dock, or, in other words, did not round head down stream as soon as we intended having her do so,
309 and we found we would not be able to get her headed down stream before we would hit the west shore, we would then stop her engines and start her backing, placing her rudders at the same time in position to have the effect to swing the stern up stream and towards the west shore: and in case said rudders does not have the effect designed, we would then stop her and start her ahead again, reversing her rudders as quick as possible after the paddle-wheel has made the 1st revolution. If we then don't succeed in getting her in the shape designed, and find from the effect of wind and current we are drifting very near said bridge, then we have to determine whether we consider it best (we don't know what is best at all times) to attempt to come ahead so as to land said boat against the west shore, or aim to head her so as to come as near as possible to the west pier, without hitting. We would be likely to try the latter in case we had fears that we could not make the west shore, and might, probably, in attempting to do so, flank against the west pier.

Int. 7. Is there any regularity in the velocity of the cross-current, and can a pilot calculate with any certainty as to the effect it will have on his boat?

310 Ans. It is sometimes much stronger that at others, and we cannot determine with any degree of certainty, only judging from the stage of water.

Int. 8. Are all the circumstances affecting a boat on its downward passage through the bridge always under the control of the pilot; and can a pilot at any time during the existence of this cross-current be sure of a safe passage through the bridge?

Ans. They are not. The pilot has full charge of the boat; that is, to act and do what he thinks is best to accomplish a safe passage; but in spite of all his efforts to handle said boat as he would like, he is some-

times very much disappointed. A pilot cannot always be sure of a safe passage through the bridge during the existence of this cross-current.

Int. 9. State your own experience, as a pilot and as captain of steamboats, of the dangers of passing through the bridge, both in going down the stream from above the point, and from the upper dock at Meredosia.

Ans. I have came down there at one time with steamboat and two barges, and thought I had the steamboat loaded and tow fastened in such position that I had but little fears being able to effect a safe
311 passage, but it being in the night, I made my calculations to hold said boat and barge as near the west pier as possible; and not finding as strong cross-current as I expected, found I had got too far to the right, and the starboard barge was going to strike the west pier. I immediately stopped and started said boat to backing, but she did not succeed in checking herself and barges up, until the starboard barge struck the west pier, that causing the stern of the steamer to swing toward the piling under the bridge. I continued to back, and finally succeeded in backing far enough, so that the larboard barge just touched the piling under the bridge. I then stopped the boat from backing and come ahead in order to prevent said steamer from swinging around across the upper end of the pier, the after end of said steamer then hitting said pier so as to smash in her fantail or guards, then slid on through, the larboard barge rubbing the piling all the way through. The damage done was not very great, only shivering the nosing or head of the starboard barge a little, and smashing in the guard of the steamer, as before stated. I have started from the landing immediately above the bridge, that is, between the lower dock and the bridge,
312 intending to continue up the river towards the point on the west shore, so as to be enabled to give myself plenty of room to turn around, then to pursue my usual course through the bridge; but finding, immediately after starting out, that the rudder did not have the desired effect in holding her head far enough to the starboard to pursue the course first intended, then I stopped her engines, started her to backing, placing her rudders so as to have the effect to back the stern down stream, toward the west, so as to enable me to head the boat up the river, to avoid, if possible, striking the bridge. Finding this did not have the desired effect, I stopped her, then went ahead slowly, seeing that I was likely to flank on to the bridge, which I did do, not doing a very great amount of damage, but giving her a pretty solid or heavy jar. At this time I had no tow; the steamer was tolerably staunch, a good solid guard; it was the "Gem." I was then lying broadside against the trestle-work, between the east pier and the east shore; I then came ahead on her until the head of the boat extended far enough past the east pier for the current to take effect on her head, causing her to swing so as to pass through what is called the east passage, with but little damage. At another time I was coming down the river with the
313 steamer "St. Joseph," having some 3 & 4 canal-boats in tow; aiming to pursue my usual course through the west passage, but finding the cross-current very strong, I saw I was likely to strike the piling under the bridge. Then believing with the headway she had, I would not have time to stop her and back her up so as to keep off from said piling, and keep from striking the same, I decided my best plan to pursue was to work her strong, aiming to get her head, or the head of the canal-boats, as near the west pier as possible without striking the same, but did not succeed in keeping the boat and tow from striking the piling and stone pier under the bridge, thereby mashing the stern of the after and outside canal-boat; but the break was mostly above

water, causing her to leak some; also breaking the fantail and guard of the steamer; doing no farther damage except to part tow-lines and head-lines, thereby letting some of the canal-boats go adrift. This was before the piling was stiffened and braced by those braces and cross-pieces and framework; it was in the spring of 1864. I have come down there with the same steamboat, "St. Joseph," with from 3 to 5 canal-boats in tow; have passed through the bridge without any collision, the
314 boat handling up to my expectation. I could name other cases where I have gone through and touched, and cases where I have gone through and not touched.

Int. 10. Have any of your steamers or vessels in tow struck the bridge and not sunk, when, if they had been unsound and unseaworthy, or their timbers and planking had been decayed at the place of collision, they would probably have been stove and sunk, or badly damaged?

(Objected to by libellants.)

Ans. I think that I have struck once or twice when they might possibly have sunk had they not been sound.

Int. 11. Is it or not usual for such boats as the "Admiral Farragut" to wait for daylight before passing through the bridge?

Ans. It is not, unless such boat should have several barges or canal-boats in tow; and seldom in that case if the night is light, and no wind; that is, to affect the boat.

Int. 12. From your experience as a pilot, and knowledge of the harbor of Meredosia, would it be possible for a steamer, with one canal-boat in tow, in a high stage of water, having landed at the upper dock,
315 bow up stream, to go down on a direct line to the northwest corner of the piling, under the drawbridge, bow down stream?

Ans. It would not.

Int. 13. Are there or not usually signal lights on the bridge during the night? and, if yea, state where they are placed.

Ans. There is one on the west pier; one on the draw, on the middle, or centre pier, and I believe there is one on the east pier, but am not certain; I seldom pass through there; I pay so little attention to the color, that I can't tell what the color of the lights are; there is one red, but whether more than one of them red, I don't know.

Int. 14. Do you or not consider the striking of the piling under the drawbridge, by a descending steamer or her tow, during the prevalence of the cross-current, as evidence of the carelessness or unskillfulnes of her pilot?

Ans. I do not consider the striking of the piling under the drawbridge by a descending steamer, or her tow, during the prevalence of the cross-current, as evidence of the carelessness or unskillfulness of her pilot.

316 Int. 15. Which do you consider the safer passage through the bridge during the prevalence of the cross-current, for boats going down from the upper dock, with one tow?

Ans. I consider the west passage the safer.

Int. 16. Are pilots on the Illinois classed according to their skill?

Ans. They are according to their skill by public opinion; but all are licensed alike.

Int. 17. State, if you know, the standing of Charles S. Ebaugh as a pilot during the whole of last year, for carefulness and skill.

Ans. I think he is admitted, by all who know him, to be a No. 1 pilot, being a good judge of water, and very skillful in handling a boat; that is what constitutes a good pilot.

Int 18. State whether or not, on the Illinois River and Mississippi

River, there is any usage or custom as to the liability of a steamboat, on a verbal contract to tow a canal-boat or barge, in the absence of a special agreement; and, if so, what is the custom or usage?

(Objected to by libellants.)

Ans. It is generally known by all canal-boat captains that the captain and owners of steamboats are required by law to have a licensed
317 pilot and engineers; and also understood that the captain and owners are not responsible in case of accident, unless proven to have been willfully or through gross negligence; there is a custom among all tow-boats to tow barges or canal-boats at the risk of the owners of such barges or canal-boats.

Int. 19. Has the custom been generally recognized by both parties to towage contracts?

(Objected to by libellants.)

Ans. It has.

Int. 20. State how many, and what sort of boats, have been sunk, wrecked, or otherwise injured at said bridge within your knowledge.

Ans. I have not personally seen any sunk at the time of their sinking, but I have seen (I can't tell exactly as regards the number) some 3 or 4 wrecks below the bridge, and understood, from what I considered to be good authority, that they had struck the bridge, which was the cause of their sinking. I have been on board of steamboats when, attempting to pass through the bridge, would strike either the barge or the steamboat against said piers, sometimes smashing in fenders of said steamboats; also, at other times, would injure a barge, but the
318 damage sometimes light, other times the nosing and deck being injured; the damage would sometimes be greater, and sometimes less; but would not sink the boats. I heard of instances wherein steamboat, at different periods, would sink a barge, canal-boat, but did not see the wreck.

*Cross-examination.*

X-int. 1. State, as near as you can, the period during which you have served as steersman on different boats since you first commenced steamboating; when you first became captain; and what portion of the time you have navigated the Illinois River.

Ans. The first steering I ever done was in 1856, on the "Col. Morgan;" run from St. Louis to Peoria; I was on her about 4 months, and steered occasionally every day. I became captain in 1862 or 1863. In 1857 I was on a steamboat on the Illinois River, but a short time; probably not more than a couple of months. In 1858 I was on the Illinois River about a couple of months. In 1859 I was on the "Umpire," as 2nd clerk, probably 2 or 3 months; during that time I put in all my odd time steering; I was also on the "Orion" the same season, in the same
319 capacity, a couple or three months—I don't recollect exactly—and put in all my odd time steering. In 1861 I was on the Illinois River, on the "Belle Peoria," during the entire season, as 2nd clerk, and put in all odd steering. In 1862 I was on the "Belle Peoria" and steamer "Katie Bruner" the entire season, as 1st and 2nd clerk, at different times; I was also steering, as usual, at odd times on these boats. In 1863 I bought the St. Joseph; I run her during the fall season of that year; I was captain, and did a good deal of steering; I also was on her in the spring of 1864, on the Illinois River; I think I sold her in July of that year. Previous to purchasing the St. Joseph I was on other boats; the "La Salle" and "Sam. Gaty" only for short periods, as 2nd clerk; I can't

state exactly how long, but my books would tell, and if required will go and get them. Some time during the fall or winter of 1864, I bought into the "Ingomar," and commenced running her as captain; in the spring of 1865 we run her from St. Louis to Peoria; I acted as captain, and steered occasionally; I sold her in a short time; I don't recollect when; I am not good at remembering dates; before I sold her she went south; I did not go with her. Sold her in the spring of 1865. Some
320 time during the summer of 1865 I went to Memphis, and took charge of the "Diana," running from Memphis to St. Louis. In the fall of 1865 I bought an interest in the "Comet;" I run her principally on the Mississippi—part of the time of the Illinois River, not more than one or two trips; in January, 1866, I ran her in the Alton trade; I was captain and pilot; she was in that trade about 4 months. I then bought into the steamer "Gem," in July, 1866, and since that time have run her on the Illinois River, in the capacity of captain, and of pilot part of the time. I had two licensed pilots part of the time on the "Gem," and part of the time one and myself; one of the pilots I did not consider very good, and made it so as to always be on watch when he was.

X-int 2. Do you intend to be understood that from the years 1856 to 1863 you served on different boats, at different times, in the capacity of clerk, steering at such odd times as you could spare from your other duties, for that purpose; that in the fall of 1863 you bought the "St. Joseph," ran her as captain during that fall and in the spring of 1864, and doing some steering; that you sold her in July of that year,
321 and bought into the "Ingomar," running her, as captain, early in the spring of 1865; that after that time you went south, and with the exception of one or two trips up the Illinois River, in the fall of 1865, you did not run on the Illinois River until July, 1866, when you bought into the "Gem;" after which you acted as captain, and part of the time as pilot?

Ans. I intend to be so understood, during the seasons of navigation.

X-int. 3. When did you obtain your license as pilot?

Ans. In the year 1865; I don't recollect the date.

X-int. 4. Can you not recollect whether or not it was before you went to Memphis to take charge of the "Diana?"

Ans. I believe it was after.

X-int. 5. Then your experience of the Illinois River is such as you have acquired from steering at odd times during the years 1856 to 1863, while serving in the capacity of clerk on different boats, and as captain of the "St. Joseph," occasionally steering during one fall and spring, you not being then a regularly-licensed pilot, and to occasional steering as captain and pilot of the "Gem" during the latter part of the season
322 of 1866. Is this so?

(The last question and the one next previous are both objected to as tending to confuse the witness, and not fully stating facts previously recited by witness as to his experience.)

Ans. My experience in handling boats in the Illinois River has been acquired mostly during that time. My experience in handling boats in other rivers, with and without tows, has been of greater importance to me than that I acquired in the Illinois River, from the fact that I have handled boats, and had them handled according to my instructions, in passing through bridges on the Upper Mississippi River, where the current is much swifter than that of the Illinois River. My experience of the Illinois River as regards the course of the channel, andthe landings at different points, as a large portion, has been acquired while flat-boating between 1847 and 1856, and occasionally flat-boating and barging since then.

X-int. 6. Is or not your means of experience of the Illinois River, at the Meredosia bridge, correctly set forth in x-int. 5? and, if not, state in what particular there is error.

(Objected to by respondents.

Objection withdrawn by respondents.)

323 Ans. I believe it is.

X-int. 7. State when the Meredosia bridge was built.

Ans. I believe it was in 1859 or 1860.

X-int. 8. When did the accident testified to in your direct examination, as occurring at the Meredosia bridge with the "St. Joseph," occur?

Ans. Two of the accidents testified to by me occurred with the "St. Joseph" in the spring of 1864.

X-int. 9. At the time of these accidents, who was at the wheel of the steamer, yourself or your pilot?

Ans. I was in the pilot-house. McEvers was the licensed pilot, and I assisted him at the wheel. I did not dare, not being a licensed pilot, to undertake the job myself. I speak of one of the accidents. At the other accident I was on the roof, I believe; can't say positive. I most generally, during the fall of 1863 and the spring of 1864, aimed to take the boats through the bridge myself, with the assistance of the licensed pilot; that is, taking hold of the pilot-wheel and changing it, as I thought best.

X-int. 10. Who piloted the "Gem" at the time of the accident mentioned by you in your direct examination?

Ans. John L. Dowler was in the pilot-house and had the wheel.

324 I directed him as to the course to start out on, telling him at the same time I did not want to take any unnecessary risks, and to way up by the point and turn around.

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X-int. 11. State how many times you personally piloted steamboats with tows, at high water, and during the existence of the diagonal current in the spring of 1864, down through the Meredosia bridge.

Ans. I took her through by handling the wheel, or having it done according to my directions, I might say from 6 to 12 times. I owned ½ the steamboat and 2 barges, and had no insurance on either, and would rather risk my own skill and judgment than that of my pilots.

X-int. 12. State the names of your pilots during the spring of 1864.

Ans. I don't believe I could do that correctly. I might give the names of the pilots I had on that boat in the fall of 1863 and spring of 1864; I had John Martineau, W'm Perle, Robert Wesley, John L. Dowler. There is two of the McEvers; I had both of them; one was Theodore McEvers, the other, I don't know his name, but they called him Dunck. I had these at different times during the fall of 1863 and spring of 1864.

325 X-int. 13. State if you have ever, during your experience as captain and pilot, sunk any boats at the Meredosia bridge.

Ans. I never did.

X-int. 14. Do you mean to be understood that the diagonal current and the velocity of the same, in the spring of the year, is the cause of the difficulties of the passage down through the Meredosia bridge?

Ans. Not all the difficulties, but the majority of them are from that cause.

X-int. 15. Do you mean to be understood that the action of the diagonal current at this point is to cause the flanking of the boat down upon the piling under the bridge?

Ans. Yes, sir.

X-int. 16. Then the more space you can provide for the flanking of the boat, before entering the bridge, you consider advantageous, do you not?

Ans. Not before entering, but give all the space we possibly can to the piling under the draw at the time the head of the boat gets on a line between the two piers.

X-int. 17. Taking into consideration the direction of this current and its velocity, and its action on boats, do you or not consider it of
326 advantage in leaving the upper dock at Meredosia, to run as near to the point on the west shore, in order to get the boat, if possible, in a direct line with the current?

Ans. I do not consider it of advantnge to get very close to the west shore, but to get my boat headed down stream as soon as possible after passing the wreck of the Martha a short distance, then bringing my boat within ¼ the width of the river to the west shore.

X-int. 18. Then your reason, stated above, for the main difficulties of going through this bridge at high water, namely, the flanking of the boat, caused by the action of the current, fails, as you do not think it necessary to provide space for such flanking. Is this so or not?

(Objected to by respondents because argumentative.)

Ans. It does not fail, from the fact that we do make what we conceive to be all the allowance that we possibly can when we get very near the bridge, or that which we think would be most advantageous to make, for a safe passage through the bridge.

X-int. 19. Do you mean to be understood that a 1st-class pilot cannot calculate with any degree of certainty of the effect that this cross-
327 current, and other circumstances, such as wind, will have upon his boat in making the downward passage of this bridge?

Ans. He can with some degree of certainty, yet they are often disappointed.

X-int. 10. How far is this landing which you have spoken of as just above the bridge (where the "Gem" got into trouble) above the Meredosia bridge?

Ans. About 200 or 250 feet.

X int. 21. Why could you not head the "Gem" up stream on that occasion?

Ans. We cannot always know why a boat will not obey her rudder; she was caught a little on the bank, which is not an uncommon thing in loading a boat; and in getting her off her head swung a little further down stream than I would like to have had it, but still thought she ought to have made it. Her head swinging faster than her stern was caused by her head getting free first and the current striking her.

X-int. 22. At what time of the year was this, and what was the stage of water?

Ans. It was in August or September. I believe the water was about 3½ or 4 feet deep.

X-int. 23. Do or do not steamers pass up the river at high water
328 and manage to stem the current?

Ans. They do.

X-int. 24. Why is it not usual for such boats as the Farragut to wait for daylight to pass down through the bridge?

Ans. From the fact that, of a clear light night, pilots think they can do about as good work, or nearly so, as in daylight, and knowing that they are on a boat with good power and hadles well.

X-int. 25. With your knowledge and experience of the Illinois River,

and have always been successful, and never doing any damage at all, not five dollars' worth. At one time I took off some of the nosing from a barge. I would not have done that if I had not thought the captain wanted to land at Meredosia, and so got my boat out of shape. That is the way I done the damage on the barge. I got her in a position that I would not have got her in if they had let me gone straight ahead.

Int. 4. Are there any dangers and difficulties generally attending steamboat navigation down through the bridge? If so, state what they are.

Ans. Yes, sir. There are wind, strong current at high water; and if a man should come down, and get his boat out of position to go through the bridge, he would be in a dangerous place, and stand in the way of sinking his boat and tows, and doing a great deal of danger.

Int. 5. Can these dangers and difficulties always be avoided by a good pilot, and are not the best of pilots liable to an accident at high water?

335 (Objected to by libellants for the reason that it is asking for an opinion on a matter in which the witness has had no personal experience.)

Ans. These dangers and difficulties cannot always be avoided. At times the best of pilots are liable to meet with accidents, from the wind and storms and current. We pilots all dread the wind more than the current, for we know the draft of the current; that is, an experienced man knows the draft of the current at the bridges. That is part of their profession.

Int. 6. Is it usual for pilots to wait for daylight, before going down through the bridge?

Ans. It is not, for those that I consider pilots.

Int. 7. Is it customaey to have signal-lights upon the Meredosia bridge? If so, state their position.

Ans. It is. A red light on the west abutment, or starboard side going down, and a green light on the swing or draw.

Int. 8. State any casualities to steamboats or tows at the Meredosia bridge that may have come to your knowledge.

Ans. I have seen some trouble there with those tow-boats having ice-boat tows and canal-boat tows. I have seen this as I have been passing by there. I have heard that the "Schuyler" sunk a barge there.

336 Also the "Farragut" sunk the canal-boat "Ajax," which was the next one I heard of. The next one was an ice-boat, sunk on the "Ajax." I heard this from Captain Hunter, one of the most reliable men on the river, who was captain of the "Beaver," the steamer that had the ice-boat in tow. There was also a canal-boat sunk; I think her name was the "Yorktown." I saw her lying on the bank, about a mile below the bridge. I seen a barge sunk some years ago; she was above the bridge, but I don't know who sunk her. The steamer "Polar Star" sunk a barge there in the spring, in the same year the bridge was built. These are all the boats I know of that were sunk at the bridge. I was on the "Progress" and flanked down into the bridge one night, and broke off about 25 feet from her guards. I was not on watch. I was asleep at the time. That was the only boat I was ever on that done any damage to the bridge. Capt. Ebaugh was the pilot at the time. I have not heard of any other damage than I have stated. There may have been accidents there when I was away, that I have not heard of.

Int. 9. Which side of a steamer is it best to have a single tow

337 upon, in high water, in descending through the bridge?

Ans. On the larboard side; that enables a steamer to run close

to the west abutment; also steadies the boat up while passing through the draw.

Int. 10. Which side of the draw-bridge is best for a descending steamer and tow at high water?

Ans. The west side.

*Cross-examination.*

X-int. 1. State the circumstances attending the collision with the bridge when you say you knocked off the nosing of a barge?

Ans. I was coming down with the steamer "Progress," and two barges in tow. I asked the captain, Ebaugh, if he wanted to land at Meredosia. This was about 2 miles above Meredosia. He gave me no answer, and I thought he wanted to land. When I got to the point opposite Meredosia, I put my rudders hard to port, to round her to and land at Meredosia. He asked me what I was going to do. I told him I was going to land. He wanted to go on down the river. That, by this time, threw me out of position or shape for the draw, and by passing through it, the barge struck the centre pier.

338 X-int. 2. State whether or not you have taken steamers and their tows through said bridge safely, under adverse circumstances, such as wind, storm, and rapid current, during your 14 years' experience.

Ans. I have taken them through in all weather, and have never stopped an hour for any kind of weather. I don't mind the current and don't care what it is.

X-int. 3. State whether you passed downward through said bridge with a steamer and tow, about the 8th March, 1866; and, if so, give the exact date of such passage.

Ans. I passed down the 2nd day of March, 1866, in the night, with the steamer "Illinois," without a tow. We were also making two trips a week at that time from St. Louis to Peoria, being twice down through the bridge, and twice up, each week. The Illinois was a regular passenger boat.

X-int. 4. State where you were on the night of the 7th and 8th March, 1866, if you can recollect.

Ans. We left St. Louis, to the best of my recollection, on the 7th, on our 2nd trip to Peoria, and after midnight were on the Illinois River.

339 X-int. 5. State, if you can recollect, what the weather was on the 7th and 8th March.

(Objected to by respondent, because it is not a proper subject of examination, as it is upon matters not brought out in direct examination.)

Ans. It was a middling dark night; I have seen darker. There was no wind worth mentioning where we were.

X. int. 6. State, if you can, the years and the seasons of the year when the losses mentioned by you in your direct examination occurred.

Ans. The steamer "Polar Star" sunk a barge there in the spring of 1859; I would not be positive. The "Schuyler" sunk a barge in the spring of 1865. The ice-boat was sunk on the "Ajax" in a week or so after the "Ajax" was sunk. The "Yorktown" was sunk after that; I could not tell at what time, as I did not take much notice of the boats sunk.

X-int. 7. State whether or not, in your experience as pilot, the landing at the upper dock at Meredosia is ever made with the bows down stream; and, if so, state under what circumstances it is done.

(Objected to by respondent for same reason as stated in objection to x-int. 5.)

340 Ans. I have landed there, bow down stream; would be handier to put freight on when we had a barge on the larboard side.

X-int. 8. State your experience and knowledge of the diagonal current, as to its direction after striking the upper end of the piling, on the west side under the draw.

(Objected to by respondents for same reasons as stated in objection to x-interrogatory No. 5.)

Ans. It reacts from the piling, and sets through the middle of the draw.

X-int. 9. State whether or not, in your experience as pilot, you can calculate very nearly with certainty as to the effect of the current and the winds upon your steamer and tow, and state whether or not you take these matters into consideration before attempting the passage of the bridge.

(Objected to by respondents for same reasons as stated in objection to x-int. No. 5.)

Ans. I do always. I know the draft of the current, and make my calculations for the wind.

X-int. 10. State why, when you get past the west abutment, you consider that you will have no more trouble, as stated in your direct examination.

341 Ans. When you get past the west abutment, you have a tow on the larboard side, I put my wheel to larboard and the rudders in the same position. That throws the stern of the steamer off or away from the piling.

X-int. 11. Do you know how many 1st-class pilots there are on the Illinois River? If you do, name them.

(Objected to by respondents for same reasons as stated in objection to x-interrogatory No. 5.)

Ans. There are some 7 or 8 1st-class men that I call careful men, and do their work right along, at high and low water.

X-int. 12. Do you know the names of the pilots who had charge of the steamers at the time of the losses at the bridge mentioned by you in your direct examination? If so, name them.

Ans. I only know three of them—Hardin Colter, Captain Ebaugh, John Martineau; but John Martineau struck the wreck of the "Ajax" after she sunk. I speak from hearsay; I was not on the boats, and don't know whether those men were at the wheel or not.

X-int. 13. State, if you know, what the character of Hardin Coulter is for sobriety, carefulness, and skill.

(Objected to by respondents for same reason as stated in objection to x-interrogatory No. 5.)

342 Ans. He is in no ways a skilful pilot. He is a very excitable man in bad places, and you take one of those kind of men at bridges, or in bad places, and they are very little account, especially in stormy weather. He is a sober man. John Martineau was not to blame for striking the "Ajax." The wreck was nine feet under water, and no pilot could see her.

(The proctor for respondents declines to re-examine the witness on the ground that his cross-examination has been conducted in an illegal and improper manner.)

(Signed) F. M. DAVIS.

*Deposition of John R. Dutch.*

FEB. 4, '67.

My name is John R. Dutch; age, 37 years; residence, Beardstown, Illinois; occupation, merchant and produce dealer.

Int. 1. Are you acquainted with the libellant in this case, Capt. Cha's Clark?

Ans. I am.

Int. 2. Do you or not know the circumstances of the taking of
343 canal-boat "Ajax" in tow by the steamer "Admiral Farragut" in the spring of 1866? and, if yea, state what were the circumstances, and if there was any contract for said towage made by the captain of the "Farragut," and "Ajax," state what that contract was, so far as the same is within your knowledge.

Ans. I know part of the circumstances; I can't state the day of the month, from my own knowledge; it was early in March, 1866. Capt. Clark and myself went to Captain Ebaugh to get him to tow the "Ajax" to St. Louis. Capt. Ebaugh said he supposed he could tow her. We asked him what he would charge for towing the boat; I think Capt. Ebaugh wanted 65 dollars for towing the boat; Capt. Clark did not want to pay more than 50 dollars. After talking some time about it I agreed to pay 15 dollars of the tow bill in order to get the boat towed out. I then left Capt's Ebaugh and Clark together with the understanding that the "Ajax" would be towed out with the "Farragut;" I think there was something said about what it would be worth to tow the boat to St. Louis and back to Beardstown, but of my personal knowledge I don't know that there was any agreement made for towing the boat the round trip. The same day after this conversation the canal-boat "Ajax"
344 was taken in tow by the steamer "Admiral Farragut," and started on her voyage some time in the afternoon of the same day. I was a passenger on the "Farragut" during the same trip. She passed on her voyage safely to Meredosia landing. Before we left Meredosia I went to bed and went to sleep; the next thing I knew I heard a loud crash and felt the jar, which was pretty strong. I got up then. I soon found we had struck the bridge, and the canal-boat was then sinking. I went out on the guard of the steamer. It was not a dark night. I could see the bridge and surrounding objects, and saw the canal-boat, what was left of her, above the water, and saw a light on the canal-boat; I supposed that light to be in the after-cabin, but was not certain about it. It was a very short time after that when the canal-boat disappeared. I was interested in the cargo of the canal-boat, but not in the boat itself.

Int. 3. Was it a verbal or written agreement to tow the "Ajax," and did or did not the conversation you speak of about towing the "Ajax" back again to Beardstown amount to an agreement to tow her back?

(Objected to by libellants for the reason that the witness has
345 already stated that he does not know that anything was agreed upon as to what it would cost for the round trip.)

Ans. It was a verbal agreement in regard to towing the boat to St. Louis. I don't know that the agreement extended to towing her back; I was only interested in getting her towed to St. Louis, and did not pay any attention to the balance of the conversation.

Int. 4. Have you any means of knowing what the value of the "Ajax" was when she was taken in tow by the "Farragut?" If yea, state what your means of knowledge were; and what was the value of the "Ajax" at that time.

Ans. I don't know that I have any means of knowing what she was worth at the time she was taken in tow by the "Farragut."

Int. 5. Did you or not hear Capt. Clark say what the value of the "Ajax" was at the time, or during the winter previous?

Ans. Capt. Clark came to me in January previous to this and told me he wanted to sell me ½ the canal-boat "Ajax," and, as near as I can remember now the price he spoke of was 800 dollars for the ½ interest; that
346 is my best opinion; I am not confident, but am pretty certain of it; I declined taking it for the reason I told the captain we did not want to own any boat stock of any kind. I asked him then what induced him to sell ½ his boat. He said he was compelled to have some money, and he saw no other way to raise it than to get it out of his boat; he also stated he would rather we would have an interest in the boat than anyone else he knew of; he went on to state we had done business together and had got along well, and said he thought if we owned part of the boat it would secure our business for the boat. We finally declined to buy the boat, but I asked the captain how much money he needed; how much he had to have, and told him we would let him have it. I don't remember the exact amount, but think he drew out from us along as he needed it to about 75 to 100 dollars.

*Cross-examination.*

X-int. 1. State how long you have known Captain Clark; and what is the extent and nature of business transaction between myself and Captain Clark?

Ans. I think I first got acquainted with him in 1862; he was
347 then running the canal-boat "John McNelis." We loaded the "McNelis" several times during the time Capt. Clark was in her. I think we loaded the "Ajax" once before this trip. Our business transactions were always satisfactory to us.

X-int. 2. Are you alone in your business? If not, state the name or names of your partner or partners.

Ans. I was not alone; I was interested in the profits of J. W. Thompson at the time we loaded the "McNelis;" at the time we loaded the "Ajax" the last time, it was "J. W. Thompson and Co.," and the bills of lading for the cargo were so made out.

X-int. 3. State the extent of your interest, or that of J. W. Thompson and Co., in the cargo of the "Ajax" at the time she was lost.

Ans. As near as I can state there was between 3,600 and 4,000 bushels of wheat and oats; but I want it to be understood that I cannot state with any degree of certainty. The cargo was insured for, I think, 6,550 dollars, or about that amount. I don't think it was insured for its full value at the time it was sunk, but at the time it was shipped it was insured for its full value.

X-int. 4. State the time it was shipped.

348 Ans. About the last of November or 1st of December, 1865.

X-int. 5. State why the "Ajax" took it on board in December, 1865, and did not tow out till March, 1866.

Ans. It was taken on with the intention of going out right away, as soon as she was loaded. She could not get any boat to tow her out until March, 1866, consequently she remained here at Beardstown until she was taken in tow by the "Farragut."

X-int. 6. Have you the bill of lading executed by Captain Clark at the time of said shipment by you? and, if not, state if you know where said bill of lading is.

(Objected to by respondents.)

Ans. At the time the loading was completed Capt. Clark executed a bill of lading and two duplicates. Capt. kept one of the duplicates; one was sent forward to E. O. Standard and Co., our correspondent in St. Louis. We kept the 3d until last spring some time, and then, to the best of my recollection, we sent it to New York with other papers pertaining to the insurance, to the best of my recollection, and have not seen it since.

X-int. 7. Can you state from recollection what was the rate of freight agreed upon by you and Capt. Clark for the cargo?

349 Ans. My recollection is that it was 9 cents for wheat per bushel, and think 7 cents for oats per bushel, but am not certain about the oats.

X-int. 8. Can you state the proportions of wheat and oats?

Ans. Not exactly; much the largest proportion of the cargo was wheat.

X-int. 9. State, if you know, what is the usual charge for towage for a canal-boat and cargo from Beardstown to St. Louis?

Ans. I could not state; I have not paid much attention to it.

X-int. 10. Please describe the circumstances connected with the collision, at the time you first had notice of it.

Ans. I don't know that I could state anything more than I have stated.

X-int. 11. Was or not the blow and crash very heavy?

Ans. Yes, sir; pretty heavy, I should call it.

X-int. 12. Have you stated all the conversation that occurred between you and Capt. Clark, in reference to the sale to you of ½ of the "Ajax?" If not, state anything else that you can recollect.

Ans. I don't think of anything more of importance.

350 X-int. 13. Do you or not recollect his saying that he considered the half interest of the "Ajax" worth more than he had offered it to you for?

Ans. I think the capt. said that that would be very cheap for it.

X-int. 14. Do you or not transact a heavy business in the shipment of produce during the season of navigation?

Ans. We ship a considerable amount of grain.

X-int. 15. Has or not Capt. Clark returned to you the sum borrowed by him from you, at sundry times?

(Objected to by respondents, because irrelevant.)

Ans. He has returned part of it.

(Signed) JNO. R. DUTCH.

*Deposition of George L. Day.*

FEB. 4, '67.

My name is George L. Day; age, 32 years; residence, Beardstown, Illinois; occupation, produce-dealer; I have been on the river as clerk, and also steamboat captain, for about 12 or 13 years; I was clerk on the Illinois River about 10 years.

Int. 1. State whether or not, from your experience as captain and clerk on the Illinois River and Mississippi River, there is any usage or

351 custom as to the liability of a steamboat on a verbal contract to tow a canal-boat or barge, in the absence of a special agreement; and, if so, state the custom and usage and how long has it existed.

(Objected to by libellant.)

Ans. I never considered that a steamboat was responsible for any

damage done by it to boats being towed while towing. This has been the custom as long as I have been on the river.

Int. 2. Has or not this custom or usage always been recognized and acquiesced in by both parties to towage contracts?

(Objected to by libellant.)

Ans. To the best of my knowledge, I think it has, as a general thing.

Int. 3. Are you acquainted with Captain Cha's S. Ebaugh, and his character and reputation as a pilot? If yea, state what that character and reputation have been.

Ans. I have been acquainted with him for 10 years, and always considered him a 1st-class pilot. So far as sobriety goes, he is a man that I never saw drink anything. He has been and is considered by all river-men as a No. 1 pilot, careful and skillful.

Int. 4. With regard to accidents to steamers and their tows,
352 while under his charge as pilot, how does the number of accidents to boats under his charge compare with those of other pilots on the Illinois River?

(Objected to by libellants.)

Ans. I don't know of his ever meeting with an accident, except the sinking of the "Ajax," since I have known him; but I don't mean to say that he has not met with accidents. If he had met with any serious accident, I would have known it, probably. Some pilots have met with more accidents, some about the same, and perhaps some less; I cannot say.

Int. 5. Are you or not acquainted with the dangers attending the navigation of steamers downward through the Meredosia bridge?

Ans. I am acquainted with them; I always consider it dangerous to go through downward with a steamboat, and always feel more or less danger until we do get through.

*Cross-examination.*

X-int. 1. State what is your present business, and what your firm name.

Ans. The produce business; and the firm name, Day and Ebaugh.

353 X-int. 2. Who is the Ebaugh that is a member of your firm?

Ans. Capt. Cha's S. Ebaugh, one of the owners of the "Farragut."

X-int. 3. State when, where, and of what steamboats were you captain, and how long you acted in that capacity.

Ans. In the spring of 1863, till February, 1865, on the Lower Mississippi and Red River; on the steamer "White Cloud."

X-int. 4. Did you ever act as pilot or captain on the Illinois River?

Ans. I never acted as pilot, and never as captain on the Illinois River. I have had charge of boats for a trip at a time while I was clerk.

X-int. 5. Did you ever personally make a contract to tow canal-boats or barges on the Illinois River?

Ans. Not that I remember of.

X-int. 6. You state that a custom or usage exists, in reference to the non-liability of steamers for damages to boats, which such steamers contracted to tow; and that, to the best of your knowledge, such custom or usage has always been recognized and acquiesced in by both parties to the contract. Please state any cases, within your personal knowledge, where this custom or usage has prevailed.

354 Ans. I cannot state, from my personal knowledge, any particu-

lar case; but there has been canal-boats sunk on the river, one of which I know of, and no damage claimed from the steamer so sinking them. It was not at the Meredosia bridge that one was lost. I cannot remember the name of the canal-boat. She was loaded at Beardstown with corn, belonging to Chadsey Brothers, and was in tow of the "St. Croix." She was sunk, I think, in Bath Shute.

X-int. 7. Do you know the name of the owner of the canal-boat, and do you not know the canal-boat belonged to the owner of the St. Croix?

Ans. I don't know the owner of the canal-boat, and don't know that she belonged to the owner of the St. Croix.

X-int. 8. Then you base your personal knowledge of this usage or custom upon the fact that you don't know of any claims for damage being pressed against steamers. Is this so?

(Objected by respondents, because argumentative, and assuming a fact not in proof.)

Ans. Yes.

X-int. 9. You state that some pilots have met with more accidents, some about the same, and some less, than Captain Ebaugh. Please
355 give the names of pilots who have met with such losses, and the number and circumstances of such losses, and where they occurred.

Ans. The 1st accident was, Aleck Grant sunk the steamer "Aunt Lette," at Big Blue; 2nd, Samuel Hart struck the Peoria bridge and badly damaged the Sam. Gaty; 3d, a collision between the "Lacon" and the "Schuyler," by Hardin Colter and Frank Davis, and both pilots had their licenses suspended for a time, from 30 to 60 days. I heard that Frank Davis sunk one barge and badly damaged another, by striking against logs in the river. These two accidents happened within about a mile of each other.

X-int. 10. Do you know the circumstances connected with the collision between the "Lacon" and "Schuyler;" and do you not know that, upon an examination of the matter, Frank Davis was exonerated from all blame?

Ans. Nothing more than I saw the decision of the inspectors suspending them, and don't know of any further action in regard to it.

*Re-direct examination.*

356 Int. 6. Have you or not frequently conversed with captains of both steamboats and canal-boats, concerning the custom and usage of towing canal-boats without risk on the part of the steamers towing, and, in such conversations, has or has not such custom and usage been recognized?

Ans. As far as canal-boatmen are concerned I don't know that I ever heard such conversations. I have never towed canal-boats or barges. But with steamboat captains and clerks I have had such conversations, and they always considered it was at the risk of the canal-boat or barge in tow.

(Signed) GEO. L. DAY.

*Deposition of John Harper.*

FEB. 4, '67.

My name is John Harper; age, 39 years; residence, Naples, Illinois; occupation, pilot on the Illinois River.

Int. 1. State how long you have been boating on the Illinois and other rivers, how long piloting, and how long piloting on the Illinois River.

Ans. It has been 21 years since I made the first trip on the Illinois River. I have had my license as pilot 8 years. I was piloting 3
357 seasons before I had my license, while I was learning the river. All the time I have been piloting on the Illinois River, from La Salle to St. Louis.

Int. 2. From your experience as a pilot, or otherwise, are you familiar with the Meredosia harbor and bridge?

Ans. I think I am; as much so as any other pilot on the river.

Int. 3. State your plan for passing downward through the Meredosia bridge with a steamer, having a canal-boat or barge in tow, from the upper dock at Meredosia.

Ans. My plan would be different, according to which side of the steamer I had the tow on. If on the larboard side I would round out and try to get my boat headed for the west pier by the time I got to the middle of the river, if I could, and hold her headed for the west pier until I got her head past the piling under the bridge, on the east side of the west passage. My answer has reference to high water. I would straighten her down, running her as close as I could to the west pier, and clear the pier.

Int. 4. Can a pilot always calculate with certainty the effect of the cross-current, winds, and other circumstances affecting his boat, at high water?

358 Ans. He cannot.

Int. 5. State whether or not a pilot can always be sure of a safe passage downward through the bridge at high water.

Ans. He cannot at high water. I never saw a pilot yet who would state that in coming down there he was sure, with a boat in tow, of passing through the bridge and not hitting the bridge. If you would ask a pilot, in coming down through the bridge, if he was sure of going through without hitting, he would answer that if the boat handled just as he wanted her to, he would go through. The first trip that a pilot would make after the river opens, he would not know how much effect the cross-current would have on him. It is a common thing for a pilot who has not been through the bridge in the spring to ask one who has been through how the cross-current is at the Meredosia bridge. After a pilot had been through the bridge once or twice he would know what leeway the current would give him, if the water remained at about the same stage. The wind he could not tell much about—what effect it would have on the boat. Boats are lighter in passing through there sometimes than at other times. Boats handle according to the
359 way they are loaded. A boat may steer very well, and stop at a landing and take on some freight or put some off, and start out and handle very bad. If the engineer did not answer the bell correctly or promptly it would make a great difference.

Int. 6. Should a steamer with a tow, on her downward trip, strike the bridge, is it evidence, in your opinion, of the carelessness, neglect, or unskillfulness of the pilot?

Ans. No, sir, it is not; for I consider the bridge a great detriment to navigation.

Int. 7. State some of the dangers attending a steamer and tow on her downward passage through the bridge at high water.

Ans. There is danger of her being caught in the cross-current and drifting so far out of the track that she will hit the bridge; or the wind coming in through that opening in the woods on the west side of the river, and strike her in such a position as to change her course and cause her to hit the bridge. The force of the current would be sufficient,

I think, to injure an old or tender boat, if driven against the ribbon that is bolted on the outside of the piling.

360 Int. 8. State which passage of the bridge is the safest at high water for a boat with one tow on her larboard side, rounding out from the upper dock.

Ans. In my experience I would prefer to pass through the west side, for the reason that the east pier has no fender around it at all—simply the naked stone.

Int. 9. If a steamer has but one canal boat in tow, on which side of her would the tow be the safest in passing down through the bridge in high water?

Ans. If I was steering the boat I would consider the tow the safest on the larboard side, for the reason I could hold my jack-staff on the west pier, or on the light that hangs on it if it was in the night, until I could get her bow down abreast of the upper end of the draw. If the tow was on my starboard side I would have to make calculation for the width of barge or canal-boat; which would, if I missed my calculation, endanger the hitting the bow of the canal-boat on the west pier, or the stern of the steamer on the piling. Another reason why a larboard tow is preferable is because the steamer is much longer than the tow, and if I do not hold the head of the steamer close to the west pier there

361 is danger of her flanking her stern into the piling.

Int. 10. Are there any signal-lights on the bridge at night? If so, state how many, and their colors, and how they are placed.

Ans. There are 2 signal-lights at night; one red, on the west side of the passage. I have seen a white or common light on the centre pier, and sometimes a green light on the centre pier.

Int. 11. Is it or not customary for such steamers as the "Admiral Farragut," with one canal-boat in tow, to wait for daylight before passing down through the bridge from the upper dock, in high water?

Ans. I know of no such custom, with either one or two boats in tow, for steamers of her class.

Int. 12. State how many boats, within your knowledge, when and by what pilots, and before or since the pilings were braced or stiffened, have been sunk or damaged at said bridge.

Ans. I don't know as I could tell when the piling were stiffened. There were 2 sunk there last summer by the "Tiger;" I don't know the pilot. There was one barge sunk there by the "Schuyler" in the spring of 1865; Hardin Colter was the pilot. There was an ice-boat sunk there; I don't know whether she hit the bridge or not; I heard

362 John Martineau was the pilot on watch; I am not certain. I think there are others, but I can't say certain now. There was a canal-boat sunk there a year ago last spring, but I don't know the canal-boat, nor who sunk her. I remember seeing the "Laclede" strike a barge there; she flanked in and rubbed against the ribbon, and took a streak out of her whole side, nearly. This was caused by a bolt-head sticking out from the ribbon. I was told Gatewood was the pilot. This was, to the best of my recollection, along in the fall, when the water was below the ribbon, in 1861, or the 1st year of the war.

Int. 13. Are you acquainted with the character and reputation of Capt. Charles S. Ebaugh for sobriety, carefulness, and skill as a pilot on the Illinois River?

Ans. I am. In my opinion, he bears as good a reputation as any pilot or captain on the river, for sobriety, carefulness and skill, and others think the same, with the exception of one or two who have an enmity against him. I have run with him on the same boat parts of 2 seasons

since I have had my license, as a pilot on his boat; one season on the "Progress," and one fall on the "Farragut."

363 Int. 14. Would it be possible for a steamer with a canal-boat in tow on her larboard side, having landed at the upper dock at Meredosia, with her bows up stream, to go from that point on a direct or straight line to the west passage through the bridge, bows down stream?

Ans. It is an impossibility.

*Cross-examination.*

X-int. 1. How far do you reside from this place, and how did you come here?

Ans. I don't know by land; it is called 25 miles by river; it is about 21 miles. I came in a buggy with Henry Ebaugh.

X-int. 2. Is it or not the duty of the officers of the steamer, or some one of them, to see that she is properly loaded?

Ans. It is the duty of the mate to see that she is properly loaded; but it is not his duty to ask the pilot if she is loaded so as to steer well.

X-int. 3. How many times have you piloted tows down through the Meredosia bridge, at high water?

Ans. I should say at least 5 or 6 times every season since the bridge has been built.

364 X-int. 4. How many boats have you sunk at that bridge?

Ans. I have sunk none; I have hit it several times, but not hard enough to hurt a boat that was sound.

X-int. 5. Have you ever had any difficulty in getting through the bridge at high water? and, if so, state how you have overcome such difficulty.

Ans. I had difficulty once there with the "Lacon;" I had 2 barges in tow. There was a hard wind blowing, and it caugh her and headed her in in such a way that I found she would not go through without hitting the bridge; the wind blew her around broadside to the current. The wind blew up stream so hard that it took her about fifteen minutes to drift the length of herself; I let her drift till she struck the west pier; then got a line to the stem of the stern of the larboard barge, and fastened it to a piling, and then backed, or crawfished, through. I came down with a canal-boat on the larboard side one morning, and flanked over till the canal-boat struck the head of the piling under the draw, hard enough to break a line; she went through without damage. That is all I recollect of, and is the only damage I ever did at the bridge.

(Signed) JNO. HARPER.

365 Deposition of Thomas C. Thompson, in behalf of claimants, taken before Azariah T. Gault, notary public, at his office in the city of Chicago, Illinois, on the 7th day of March, A. D. 1867.

*Deposition of Thomas C. Thompson.*

1st. int. What is your name, age, occupation, and place of residence?

Ans. My name is Thomas C. Thompson; I am fifty-seven years old; I am a shipwright and caulker; I live in Chicago.

2 int. How long have you worked at the business of shipwright and caulker?

Ans. Thirty-five years.

3 int. Have you any knowledge of the canal-boat "Ajax?"

Ans. I have, sir.

4 int. Did you ever work on her; if so, when, where, and what did you do?

Ans. I have worked on her a year ago last January or February; the latter part of January, and forepart of February, at Beardstown, or across the river from Beardstown; I fixed her bow. The bow-
366 head had been pulled off, or something that opened the seam on the deck right arpund.

5th int. Was you acquainted with her condition at that time?

Ans. I was acquainted with the condition of her bow; scarcely anything else about her.

6th int. What was the condition of her bow?

Ans. Her bow was not in a very good condition, the bow was opened; a seam around on the deck, probably an inch at the stem, and tapering off smaller as it went aft; I covered the seam with a board. Capt. Clark told me that the cause of the opening was, some boat had towed her on the river, and had run her into something; either the dock, or some other boat, and pulled the bow out. There was one piece of her bow on the larboard side that was slewed around several inches; I put that back to its old place. I done some little caulking on the bow, perhaps fifty feet altogether on the bow outside, and some of her whales had started a little, so that I could caulk between the end of the whale and the stern. I think I did work one and a half or two days altogether on her.

367 7 int. What was the general appearance of this boat at that time?

(Question objected to for the reason that the witness has already stated that he did not make an examination of the boat, except so far as the damage to the bow was concerned.)

Ans. She was rather a rough-looking boat; she looked as though she had seen pretty hard times. Her bow was decayed in some places; I mean the planking. I could not see anything else—some parts of the seams—and there had been some pieces put in. She had been pitched—the seams on the outside; I did not examine her aft of the forehatch.

8 int. Who was this Capt. Clark you speak of in answer to the sixth interrogatory?

Ans. He was captain of the boat; I think it was Charles Clark.

9 int. Do you think, from your experience in your business, that it would be possible, by taking up one streak of plank on each side of the kelson the whole length of the boat, and inserting a knife-blade between the seams of the lining now and then, to detect decay in the side-timbers and floor?

Ans. I think it is next to an impossibility. In my experience,
368 in a canal-boat especially, the seams are generally caulked for carrying grain, and it would be nearly impossible to get a knife through the seams far enough to detect rot in the frame and the floor timbers. When the plank is taken up on the side of the kelson, we scarcely ever find rot as soon as in other places about the boat.

10 int. How long before January, 1866, had you known this canal-boat "Ajax?"

I don't think that I saw her over two or three times in four years, and should not have known her at the time of my repairing her to have been the old Nile had not Capt. Charles Clark told me that it was the old Nile. I could not say for certain how long I knew her. I think I knew her ever since she had the name of the Ajax. I think she was hauled out on the trucks of Mr. Akharst and Douglass' ship-yard, the

since I have had my license, as a pilot on his boat; one season on the "Progress," and one fall on the "Farragut."

363 Int. 14. Would it be possible for a steamer with a canal-boat in tow on her larboard side, having landed at the upper dock at Meredosia, with her bows up stream, to go from that point on a direct or straight line to the west passage through the bridge, bows down stream?

Ans. It is an impossibility.

*Cross-examination.*

X-int. 1. How far do you reside from this place, and how did you come here?

Ans. I don't know by land; it is called 25 miles by river; it is about 21 miles. I came in a buggy with Henry Ebaugh.

X-int. 2. Is it or not the duty of the officers of the steamer, or some one of them, to see that she is properly loaded?

Ans. It is the duty of the mate to see that she is properly loaded; but it is not his duty to ask the pilot if she is loaded so as to steer well.

X-int. 3. How many times have you piloted tows down through the Meredosia bridge, at high water?

Ans. I should say at least 5 or 6 times every season since the bridge has been built.

364 X-int. 4. How many boats have you sunk at that bridge?

Ans. I have sunk none; I have hit it several times, but not hard enough to hurt a boat that was sound.

X-int. 5. Have you ever had any difficulty in getting through the bridge at high water? and, if so, state how you have overcome such difficulty.

Ans. I had difficulty once there with the "Lacon;" I had 2 barges in tow. There was a hard wind blowing, and it caugh her and headed her in in such a way that I found she would not go through without hitting the bridge; the wind blew her around broadside to the current. The wind blew up stream so hard that it took her about fifteen minutes to drift the length of herself; I let her drift till she struck the west pier; then got a line to the stem of the stern of the larboard barge, and fastened it to a piling, and then backed, or crawfished, through. I came down with a canal-boat on the larboard side one morning, and flanked over till the canal-boat struck the head of the piling under the draw, hard enough to break a line; she went through without damage. That is all I recollect of, and is the only damage I ever did at the bridge.

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366 head had been pulled off, or something that opened the seam on the deck right arpund.

5th int. Was you acquainted with her condition at that time?

Ans. I was acquainted with the condition of her bow; scarcely anything else about her.

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Ans. Her bow was not in a very good condition, the bow was opened; a seam around on the deck, probably an inch at the stem, and tapering off smaller as it went aft; I covered the seam with a board. Capt. Clark told me that the cause of the opening was, some boat had towed her on the river, and had run her into something; either the dock, or some other boat, and pulled the bow out. There was one piece of her bow on the larboard side that was slewed around several inches; I put that back to its old place. I done some little caulking on the bow, perhaps fifty feet altogether on the bow outside, and some of her whales had started a little, so that I could caulk between the end of the whale and the stern. I think I did work one and a half or two days altogether on her.

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(Question objected to for the reason that the witness has already stated that he did not make an examination of the boat, except so far as the damage to the bow was concerned.)

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8 int. Who was this Capt. Clark you speak of in answer to the sixth interrogatory?

Ans. He was captain of the boat; I think it was Charles Clark.

9 int. Do you think, from your experience in your business, that it would be possible, by taking up one streak of plank on each side of the kelson the whole length of the boat, and inserting a knife-blade between the seams of the lining now and then, to detect decay in the side-timbers and floor?

Ans. I think it is next to an impossibility. In my experience,
368 in a canal-boat especially, the seams are generally caulked for carrying grain, and it would be nearly impossible to get a knife through the seams far enough to detect rot in the frame and the floor timbers. When the plank is taken up on the side of the kelson, we scarcely ever find rot as soon as in other places about the boat.

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I don't think that I saw her over two or three times in four years, and should not have known her at the time of my repairing her to have been the old Nile had not Capt. Charles Clark told me that it was the old Nile. I could not say for certain how long I knew her. I think I knew her ever since she had the name of the Ajax. I think she was hauled out on the trucks of Mr. Akharst and Douglass' ship-yard, the

first time she was launched, and got the name of the Ajax, but won't be positive. This, I think, is five years ago.

11 int. Where do the timbers of such a boat first decay?

Ans. The generally decay in the bow and stern first; they generally give out first in the bilge or knuckle part, the corner that is in the water.

369 12 int. After a canal-boat had run four years without being rebuilt, would her side-timbers, and in the bow and stern, especially if she was built from an old boat, be likely to be decayed?

Ans. They would, in a measure; some boats that I have helped repair commenced to rot in two years; others would run five and six years before you could find them rotten; the boat that shuts up tight rots soon.

*Cross-examination.*

1 x-int. State more particularly as to the opening of the seam around on the deck; state whether it was on the top of the deck, or on the side of the boat.

Ans. It was on the deck.

2 x-int. How far back did it extend?

Ans. About seven or eight feet.

3 x-int. Did you or not, on this occasion, caulk or repair these damages thoroughly?

Ans. No, sir; only temporarily.

4 x-int. What was paid you for such repairs, and who paid you for them?

370 Ans. Six dollars; and Captain Charles Clark paid me.

5 x-int. Was or was not the canal-boat Ajax loaded at the time you made these repairs?

Ans. Partially; probably half.

6 x-int. How far down on her side from the deck was it that her plank were partially decayed?

Ans. Probably within six inches of the water; I could not say how much of her sides was out of the water. Probably three feet on the sides; more on the bow, between four and five feet.

7 x-int. Did you make an examination of the inside lining of the Ajax?

Ans. I did not.

(Signed) THOMAS C. THOMPSON.

Deposition of John A. Purdam, in behalf of claimants, taken before Benjamin F. Hickman, as special commissioner, at his office in the city of St. Louis, Missouri, on the twenty-seventh day of March, A. D. 1867.

371 *Deposition of J. Purdam.*

Int. 1. Were you or not on the steamer Admiral Farragut on [on] the morning of the 8th March, A. D. 1866; and, if so, in what capacity? State also your age and place of residence, and what has been your occupation.

Int. 2. Did or did not the steamer Admiral Farragut stop at Meredosia on the night of the 7th, or morning of the 8th, Ma., 1866; and, if so, at what time; and when the Farragut left the wharf or dock at Meredosia, on the 8th March, 1866, how did she get out into the stream? Did she back out or round out, and what course did she take to get into the stream?

Int. 3d. State, as nearly as you can, how the boat (the Farragut) was managed in approaching the railroad bridge at Meredosia, and give in detail all that occurred; whether the Farragut had a tow, and what were your means of observation; and state also who was at the wheel of the Farragut.

Int. 4. To what do you attribute the collision of the tow of the Farragut with the bridge, or piling of the bridge, on the 8th March, 1866?

Int. 5. If you saw any negligence or carelessness or want of skill
372 on the part of the officers or crew of the Farragut on that occasion, please state what it was.

Int. 6. State any other matter or thing that may be within your knowledge of advantage to the claimants, C. S. Ebaugh and others, owners of the Farragut.

*Cross-interrogatories.*

X-int. 1. If you state in reply to direct interrogatory 1st that you were on board of the steamer Admiral Farragut on the morning of March 8th, 1866, state in what capacity, and what your duties were in such capacity.

X-int. 2. Where were you at the time the Admiral Farragut left wharf at Meredosia? State particularly in what portion or portions of the steamer you were and what you were doing.

X-int. 3. State particularly in what portion or portions of the steamer you were, and how you were employed from the time the Admiral Farragut left the wharf at Meredosia till the moment she collided with the piling under the bridge.

X-int. 4. If you state that you do know who was at the wheel
373 of the Farragut, state particularly your means of knowledge and how you ascertained the fact, and why you took the pains to ascertain the fact. State also how far the Admiral Farragut was from the bridge when you discovered who was at the wheel, and where you stood when you discovered it.

X-int. 5. State if you have ever had any experience in the management of steamers, or the piloting of steamers and tows on the Illinois River? and, if so, state particularly when, where, and all the circumstances connected with such experience.

X-int. 6. State if you have had any communication, either by letter or otherwise, or have had any personal communication, with any of the parties in interest in this suit, or with any person or persons representing such interested parties, as to the matters on which you have testified. If so, state particularly the nature of such communications, and when, where, how, and with whom such communications took place.

374 *Answers to direct interrogatories.*

Answer to int. 1. I was on the steamer Admiral Farragut on March 8th, A. D. 1866. I was watchman of said st'r. My age is 38 years. Have followed the river off and on for 20 years. Residence, generally St. Louis, Mo.

Answer to int. 2. The st'r Adm'l Farragut did stop at Meredosia during the night of the 7th of March, I think; what time of night I don't recollect. My recollection is she rounded out in the stream, got her head fair for the draw in the bridge, came up to it gently, and when part of the way through went ahead on the engines, but not hard.

Answer to int. 3. We came up to the bridge slow, got her head in the

passway very nice, and I remarked to some one, we was going through all right. We had a canal-boat in tow. I was standing on the boiler-deck on the opposite side from the tow. I saw when we was about half-way through the bridge I could see the effect of the cross current which the piers make, striking our stern, causing it to swing towards the turn-bridge. I was observing the manner of passing bridges carefully, as I never saw much boating done where bridges spanned
375 the river. I did not see Capt. C. S. Ebaugh at the wheel, but all that I ever heard say anything about it said he was, and I never doubted but what he, C. S. Ebaugh, was at the wheel upon passing the bridge, on the st'r Admiral Farragut, March 8th, 1866.

Answer to int. 4. I think the collision was caused by the piling which supports the turn-bridge, striking the canal-boat near the stern.

Ans. to int. 5th. I didn't see any carelessness, or negligence, or want of skill on the part of the officers or crew in relation to navigating the boat.

Ans. to int. 6th. I heard the captain of the canal-boat say he was satisfied with the manner in which he was treated on the boat after his canal-boat was sunk. He said in St. Louis he was all right, as the insurance was good on his boat, and he had his papers right for the money, or something to that effect. He, the captain of said canal-boat, was, with his wife, in the water some time, and when we got them out we done all we could to make them comfortable. I believe the canal-boat to have been rotten; for the lick was not hard, not sufficient to of sunk a sound boat, in my opinion.

376 *Answers to cross-interrogatories.*

Answer to x-int. 1. I was on board st'r Adm'l Farragut on the morning of March 8th, A. D. 1866; was watchman. The duties of a watchman on the Illinois River is something like a second mate; he sees to the lamps on deck; sees the signal-lights are burning of a night; calls the change of watches; and keeps a general look-out for fires, water in the hull; guards against thieves, and superintends the men in landing the boat; on deck when the mate is asleep, or on the roof.

Answer to x-int. 2. I was standing on the boiler-deck, opposite from the tow, when we started through the passway of the bridge. I was watching closely the manner of passing through bridges.

Answer to x-int. 3. I was employed in my duties as watchman, from the time we left the wharf at Meredosia until the collision took place, in various parts of the boat; not on the roof, but on deck and in the cabin.

Answer to x-int. 4. I did not see who was at the wheel; can't say of my own knowledge, but never heard doubted of being C. S. Ebaugh
377 Answer to x-int. 5. I never had charge of or management of steamers or tows. I have been running on boats that did tow; but my experience would not amount to anything.

Answer to x-int. 6. I came up from New Orleans, March 2nd, and Captain C. S. Ebaugh left word at A. Jones and Co., No. 4 City Buildings, South Levee, for me to come and see him. I did so, as his boat was in port, the 3d or 4th of March, 1867. He told me he wanted my testimony in this case, as he had been sued for the boat and cargo.

(Signed) JNO. A. PURDOM.

**Deposition of Henry Detweiler, James B. Thomas, John L. Leech, William H. Dutch, and Theodore L. McEvers, in behalf of claimants, taken before Henry S. Lasar, special commissioner, at St. Louis, Missouri, on the 26th day of June, the 3d and 10th days of July, and the 15th and 19th days of August, A. D. 1867.**

378 *Deposition of Henry Detweiler.*

JAN. 3, '67.

1 int. What is your name, age, place of residence, and occupation?

Ans. My name is Henry Detweiler; I am 42 years old; I reside at Peoria, Illinois; am master and pilot of the tow-boat "Beaver."

2 int. Have you or not any knowledge of the navigation of the Illinois River? and if so, state your opportunities and means of knowledge.

Answer. I have [no] knowledge of the navigation of the Illinois River. I have navigated on the Illinois and Mississippi Rivers, mostly on the Illinois River, for 26 years.

3 int. Are you or not acquainted with the situation of the railroad bridge at Meredosia, and the direction of the currents of the river at that point; and, if so, in what direction does the Illinois River run down to the point; in what direction does the river run as it leaves said bridge? Are there or not any currents affecting boats passing through said bridge; and if there are currents, how do they affect boats passing through said bridge; and what is the effect, if any, of high water aforesaid upon such currents?

Ans. I am acquainted with the situation of the railroad bridge
379 at Meredosia, and the direction of the currents of the river at that point. As a general thing, the current runs to the draw-pier at high water. There are times, however, when the current runs to the opposite side, by the wind from the Meredosia side; I think it is the S. E. wind. The main channel of the river is a curve, like the shape of a half-moon; the draw-pier say to be situated near the centre of the curve, the current runs away from that centre in a direction toward the shore opposite Meredosia. Boats passing through the bridge, especially those having tows, drift toward the draw-pier. The high water, of course, makes this drifting a great deal worse; the current a great deal stronger.

Int. 4. State what, in your judgment, are the hazards and perils to a steamboat in passing through said bridge at Meredosia, and how, especially, collisions with said bridge occur, if they do occur, even with careful and skillful navigators.

Ans. This drifting, just described by me—greatly increased by high water and windy weather—in my answer to interrogatory 3, is the great hazard and peril to and for every boat passing through said bridge.
380 Collisions with said bridge therefore generally occur by throwing them against this pier. We have to use every precaution. I speak more about tow-boats, because a packet-boat, having no tows, goes through under full head of steam, but we tows have generally to stop our headway, and back up, and then drop down slowly until we enter the bridge; consequently, in dropping, the cross-current there is sometimes so strong that it is almost impossible to avoid the pier; we rub it most every time; we may get against it easier at times, because we have more experience than others; no matter how careful or skillful the navigator may be.

Int. 5. Have you not personally known of any case or cases where

steamers, or their tows, in passing through the said bridge, have been injured? and, if so, state the circumstances, and what the causes of such injury.

Ans. I have heard of several cases. This spring, in passing through said bridge, we injured one of our barges, (I am now master, pilot, and owner of the Beaver;) done by the wind and current; both of them being very strong, the boat became unmanageable, which is generally the result of the passing through said bridge.

381 Int. 6. Can you state whether or not there is any custom or usage prevailing as to the liability of steamers on general verbal contracts for towing on the Mississippi and Illinois Rivers, in the absence of special agreements? and, if so, what is such custom or usage? Do such general verbal contracts, or do they not, by custom and usage, except the usual dangers and hazards of river navigation?

Ans. In the absence of special agreements, every tow-boat which fastens on to us does so at its own risk. Such is the only custom or usage I ever heard of or have known on the Illinois and Mississippi Rivers; besides I never knew of any special agreement being made. Having on my boat only competent and licensed pilots, engineers, &c., &c., and running only in full compliance with the U. S. steamboat laws, we do not hold ourselves liable for any damage done to tows. Boats, however, which run loosely, not observing statutory requisitions, may be held liable; that is, as far as my opinion goes. That the legally competent masters, however, do not consider themselves, and are not held liable, is the general custom, and not merely an opinion of mine.

382 In one or two instances, as when we have snagged, we have never been held liable for the damages. I only repeat, I know of no general verbal contracts whatever, no further than determining the price.

Int. 7. Have you or not any knowledge of Captain Charles S. Ebaugh? and, if so, state what is his character and conduct, as to skill, carefulness, and prudence, as a navigator.

Ans. I know Capt. Charles S. Ebaugh, and have known him about 10 years. He stands, in regard to skill, carefulness, and prudence, as a No. 1 pilot or navigator. He is sober, straightforward, careful, &c.

Int. 8. State what, so far as you know, Capt. Ebaugh's opportunities have been to acquire a knowledge of the navigation of the Illinois River.

Ans. Capt. Ebaugh has been mostly master and pilot for his own boat for about the last 10 years.

Int. 9. Assuming that the steamer Admiral Farragut, with the canal-boat Ajax in tow, on the larboard side, was passing through the bridge at Meredosia, at about 4 o'clock a. m., on the 8th March, 1866; that the water was at a height when the digonal current across the passage-way through said bridge is strongest; that Charles S. Ebaugh was at the wheel; that the steamer Farragut, carefully steered and managed,

383 was, in passing through said bridge, forced toward the piles protecting the east pier of said bridge; and that the canal-boat Ajax came in contact with said piles and was stove and sunk; would or would not such a result be within the ordinary perils and hazards of river navigation?

Ans. Under the circumstances assumed, as stated by and in the 9th interrogatory, the result stated therein would be within the ordinary perils and hazards of river navigation.

Int. 10. State any other matter or thing within your knowledge that may be of advantage to the defendants, the owners of the Admiral Farragut.

Ans. I can only say that I conscientiously believe that said bridge is really a great obstruction to the river navigation there, and however few or many cases of injury or damage there may there have occurred, no tow-boat, at high water or windy weather, passes through said bridge but what may come in collision with the pier.

*Cross-interrogatories.*

X-int. 1. If you say you are acquainted with, and have navigated,
384 the Illinois River at the Meredosia bridge, state how long you have so navigated it; in what capacity, and whether as captain or pilot of steamers for passengers, freight, or towage. State, as nearly as you can, how many times in each year, since the said Meredosia bridge was built, during the period of high water you have, as captain or pilot, navigated steamers down through said bridge. State the circumstances of such passage as to whether you had any boats or barges in tow on such occasions; and, if so, how many.

Ans. As I said before, I have navigated the Illinois River 26 years in all capacities, as a pilot on packets for a number of years, and then master and pilot on tow-boats for about 10 years; and sometimes I piloted a little between times for Mr. Hancock. I have navigated nearly all the time since the said bridge was built, every year, as long as there was water enough to run and tow, excepting the 3 years I was in government service. I mostly had from 2 to 6, or as high as 10, tows passing through said bridge.

X-int. 2. If you say you have navigated said river at the Mere-
385 dosia as a pilot, state whether you were at the time regularly licensed for that purpose, and how long you have had such license.

Ans. I have been licensed ever since the passage of the law.

X-int. 3. State, while actually engaged in the capacity of pilot, (I mean when you had control personally of the wheel,) how many boats you have sunk, in passing down the river, by reason of colliding with the Meredosia bridge, or the piling under the bridge. State the name of the steamer you were piloting when you sunk such boats; how many boats you had in tow at the time; the date or dates on which such losses occurred; the time of day or night, and all the circumstances connected with such collisions and losses; and, if you say you have never sunk any boats at said bridge, state what, if any, accidents of any kind whatever you have met with while personally acting as pilot (I mean when you personally had control of the wheel) in passing down the river through the said bridge. State all the circumstances attend-
ing such accidents, as to date; the name of the steamer you were
386 then piloting; how many boats you had in tow; the names of the boats which you injured; the state of the weather; the time of day or night, and particulars as to what damages were done to the boats on those occasions.

Ans. The Yankee sunk a canal-boat she had in tow, while I was captain of her, though I had not personally control of the wheel; therefore I am not required to answer the remaining questions. I never met with any accident while I had control of the wheel.

X-int. 4. If you say you were not personally acting in the capacity of pilot at the time when such losses or accidents occurred while passing down through said Meredosia bridge, state in what capacity you were acting, and give the name or names of the pilots who had the wheel at the time or times of such losses or accidents, and state whether or not

you personally witnessed such losses or accidents; and, if so, state all the facts and circumstances connected with such losses or accidents, as to the amount and description of the damage done; the state of the weather at the time, and the hour of the day or night; also how
387 many boats you had in tow at the time, and give the names of the boats lost or injured.

Ans. All the accidents or losses I know of occurred on the boat which was sunk by the Yankee, as referred to by me in the immediately preceding answer; and the canal-boat—I think it was the Eleida—was raised again. It was high water; about midnight. Do not know the amount of the damage; probably 300 dollars.

X-int. 5. If you say there is an usage or custom prevailing on the Illinois and Mississippi Rivers as to the liability of steamboats on their towage contracts, please state whether such usage or custom is understood to exempt steamers on their towage contracts from liability for losses arising from negligence or mismanagement on the part of those having the steamer in charge; and if you say that an usage or custom of some nature is understood and recognized by both parties to the towage contract, please state fully what that usage or custom is, and your means of knowledge as to the recognition of such usage and custom on the part of those who are being towed by such steamers, and state any instances in your own personal experience where there
388 has been such recognition on their part, and all the circumstances concerning it; also the circumstances concerning the accidents or losses, when such usage or custom was so recognized by them. State also whether or not it was personally agreed to in each individual case, at the time the contract for towage was made, that the boat should be towed at her own risk; and, if so, state the exact words of the contract, and the names of the parties with whom you made such contract, or the names of the boats so lost or injured which you towed under such contract.

Ans. While we, as masters, expect and are expected, as men of honor, to do the best, to exercise the utmost care and prudence toward our tows, we are, under no circumstances, by the custom or usage referred to in the interrogatory, and by me testified to in the interrogatories-in-chief, compelled or expected in any way to make good the damage, no matter how caused, whether accidentally, or by mismanagement or negligence. I know of no other custom prevailing than that of exempting steamers on their towage contracts from liability for losses arising even, as already stated, from mismanagement or negligence. As a
389 matter of course, after damage has occurred, we are also expected to do the best we can, to use all our exertions to save boat and cargo, or either, but no more. I again repeat most positively that, without making any contract, it is now standing by usage, recognized law, and custom, that every boat is towed at its own risk. Formerly a notice of this kind used to be posted up on the boats; but it being so generally understood now, the notice has become superfluous. I never heard of any other custom prevailing.

(Signed) HENRY DETWEILER.

*Deposition of James B. Thomas.*

JAN. 10, '67.

Int. 1. What is your name, age, place of residence, and occupation?

Ans. My name is James B. Thomas; I am 49 years old; I reside in the city of St. Louis, Missouri; I am a pilot of the Illinois River.

2 int. Have you or not any knowledge of the navigation af the Illinois River? and, if so, state your opportunities and means of knowledge.

390 Ans. I have knowledge of the navigation of the Illinois River. I have piloted the Illinois River some 24 years.

3 int. Are you or not acquainted with the situation of the railroad bridge at Meredosia, and the direction of the currents of the river at that point; and, if so, in what direction does the Illinois River run down to the point; in what direction does the river run as it leaves said bridge? Are there or not any currents affecting boats passing through said bridge; and if there are currents, how do they affect boats passing through said bridge, and what is the effect, if any, of high water aforesaid upon said currents?

Ans. I am acquainted with the situation of the railroad bridge at Meredosia and the direction of the currents of the river at that point. The current makes a half-circle running through the bridge, running from the west pier to what is called the draw-pier. The river runs southwest as it leaves said bridge. There is generally a very strong current there on account of a bar being at that place. The current carries boats passing through said bridge from the western to the draw-pier. High water makes this current very strong. It is very

391 difficult for tows to keep off that middle pier by backing.

4 int. State what, in your judgment, are the hazards and perils to a steamboat in passing through said bridge at Meredosia; and how, especially, collisions with said bridge occur, if they do occur, even with careful and skillful navigators?

Ans. I consider it that a steamboat is liable at any time to strike the draw-pier and do more or less damage, and incur even often loss of life; the collisions occur, as I have stated already, by the currents carrying the steamboat to the draw-pier. It is no matter whatever, how careful or skillful the navigator may be, he cannot avoid it.

5 int. Have you not personally know of any case or cases where steamers, or their tows, in passing through the said bridge, have been injured? and, if so, state the circumstances, and what the causes of such injury.

Ans. I have personally known several cases where steamers and their tows, in passing through said bridge, have been injured. I misunderstood the question. Personally, however, I have had one case.

392 It was the La Salle, in 1859 or '60. We had two barges in tow; going through the bridge, the current carried me against the draw-pier, in spite of all the care and skill I might have exercised, and smashed one of the two barges loaded down, and sank immediately.

6 int. Can you state whether or not there is any custom or usage prevailing as to the liability of steamers, in general verbal contracts for towing, on the Mississippi and Illinois Rivers, in the absence of special agreements; and, if so, what is such custom on usage? Do such general verbal contracts, or do they not, by custom and usage, except the usual dangers and hazards of river navigation?

Ans. It has always been the custom prevailing on the Illinois River, or any other river I heard of, that the steamboat was not accountable for any damage done to the tows by towing. I never heard of any other custom. The one referred to by me is universally prevailing.

7 int. Have you or not any knowledge of Capt. Charles S. Ebaugh? and, if so, state what is his character and conduct as to skill, carefulness, and prudence as a navigator?

393 Ans. I know Capt. Charles S. Ebaugh well, and have known

him well for the last fifteen years. He has always been, and always been considered by every river man I have ever heard speak of him, a very careful and skillful navigator.

8 int. State what, so far as you know, Capt. Ebaugh's opportunities have been to acquire a knowledge of the navigation of the Illinois River.

Ans. Capt. Ebaugh obtained his knowledge of the navigation of the Illinois River by carefully running the river for the last fifteen years that I have known him; both as master and pilot of his own vessels, too.

9 int. Assuming that the steamer Admiral Farragut, with the canal-boat Ajax in tow on the larboard side, was passing through the bridge at Meredosia, at or about 4 o'clock a. m., on the 8th March, A. D. 1866; that the water was at a height when the diagonal current across the passage-way through said bridge is the strongest; that Charles S. Ebaugh was at the wheel; that the steamer Farragut carefully steered and managed, was, in passing through said bridge, forced toward the piles protecting the east pier of said bridge; and that the canal-boat
394 Ajax came in contact with said piles, and was stove and sunk; would or would not such a result be within the ordinary perils and hazards of river navigation?

Answer. Assuming all the various circumstances stated in the 9th interrogatory, such a result as also stated in the same interrogatory would be within the ordinary perils and hazards of river navigation.

10 int. State any other matter or thing within your knowledge, that may be of advantage to the defendants, the owners of the Admiral Farragut.

Ans. I don't know anything more that what I have already stated.

*Cross-interrogatories.*

1 x-int. If you say you are acquainted with and have navigated the Illinois River, at the Meredosia bridge, state how long you have so navigated it, in what capacity, and whether as captain or pilot for steamers for passengers, freight, or towage. State, as nearly as you can, how many times in each year since the said Meredosia bridge was built, during the period of high water, you have, as captain or pilot, navigated
395 steamers down through that bridge. State the circumstances of such passage, as to whether you had any boats or barges in tow on those occasions; and, if so, how many.

Ans. I have navigated the Illinois River, always as pilot, for the last 24 years; have piloted steamers of all kinds, carrying passengers, freight, or tows. I have piloted every season when the water is high, never missed one, and kept running as long as the water stayed high. I passed through the bridge twice every week.

2 x-int. If you say you have navigated said river at the Meredosia bridge as a pilot, state whether you were, at the time, regularly licensed for that purpose, and how long you have had such license.

Ans. I have been regularly licensed every year since the law has been passed.

3 x-int. State, while actually engaged in the capacity of pilot, (I mean when you had control personally of the wheel,) how many boats have you sunk in the passage down the river by reason of colliding with the Meredosia bridge, or the piling under the bridge. State the name
396 of the steamer you were piloting when you sunk such boats, how many boats you had in tow at the time, the date or dates on which such losses occurred, the time of day or night, and all the cir-

cumstances connected with such collisions and losses; and if you say you have never sunk any boats at said bridge, state what, if any, accidents, of any kind whatever, you have met with, while personally acting as pilot (I mean when you personally had control of the wheel) in passing down the river, through the said bridge. State all the circumstances attending such accidents, as to date, the name of the steamer you were then piloting, how many boats you had in tow, the names of the boats which you injured, the state of the weather, the time of day or night, and particulars as to what damages were done to the boats on those occasions.

Ans. I have only sunk one barge, all the circumstances of which I have already stated in my answer to the fifth interrogatory-in-chief.

4 x-int. If you say you were not personally acting in the capacity of pilot at the times when such losses or accidents occurred while
397 passing down through said Meredosia bridge, state in what capacity you were acting, and give the name or names of the pilots who had the wheel at the time or times of such losses or accidents; and state whether or not you personally witnessed such losses or accidents; and, if so, state all the facts and circumstances connected with such losses or accidents as to the amount and description of the damage done, the state of the weather at the time, and the hour of the day or night; also how many boats you had in tow at the time, and give the names of the boats lost or injured.

Ans. I had control of the wheel when the barge was lost of which I spoke.

5 x-int. If you say there is an usage or custom prevailing on the Illinois and Mississippi Rivers as to the liability on their towage contracts, please state whether such usage or custom is understood to exempt steamers on their towage contract from liability from losses arising from negligence or mismanagement on the part of those having the steamer in charge; and if you say that an usage or custom of some nature is understood and recognized by both parties to the towage contract, please state fully what that usage or custom is, and your
398 means of knowledge as to the recognition of such usage and custom on the part of those who are being towed by such steamers; and state any instances in your own personal experience where there has been such recognition on their part, and all the circumstances concerning it; also the circumstances concerning the accidents or losses when such usage or custom was so recognized by them. State also whether or not it was personally agreed to in each individual case at the time the contract for towage was made, that the boat should be towed at her own risk; and, if so, state the exact words of the contract, and the names of the parties with whom you made such contract, or the names of the boats so lost or injured which you towed under such contracts.

Answer. I never heard any special contract made, and from my experience, as one who has piloted the Illinois River 24 years, I say that there is no other custom or usage prevailing than the one I stated; that all the liability rests on the side of the boat towed. I do not know that this custom is qualified so as to render those who, by mismanagement or negligence, cause damage to their tows liable for the same.

(Signed) JAMES B. THOMAS.

399 *Deposition of John L. Leach.*

JUNE 26, '67.

1 int. What is your name, age, place of residence, and occupation?

Ans. My name is John L. Leach; I am 27 years old; I reside in Peoria, Illinois; I am a pilot by occupation.

2 int. Have you or not any knowledge of the navigation of the Illinois River? and, if so, state your opportunities and means of knowledge.

Ans. I have knowledge of the navigation of the Illinois River. I served an apprenticeship at piloting for nearly three years. I commenced piloting in 1860, and have ever since been piloting on the Illinois River.

3d int. Are you or not acquainted with the situation of the railroad bridge at Meredosia, and the direction of the currents of the river at that point; and, if so, in what direction does the Illinois River run down to the point; in what direction does the river run as it leaves said bridge; are there or not any currents affecting boats passing through said bridge; and if there are currents, how do they effect boats passing through said bridge, and what is the effect, if any, of high water aforesaid upon said currents?

400 Ans. I am acquainted with the situation of the railroad bridge at Meredosia; also with the direction of the currents at that point. The Illinois River runs in a straigh direction nearly east to the point above the point above the bridge. The river runs nearly south as it leaves said bridge. There are currents affecting boats passing through said bridge. These currents will affect boats passing through said bridge; that is, the current from the western shore will throw boats over on the eastern pile of the draw. At high water there is a stronger current than at the common stage of water. There is always a cross-current there, but naturally is increased at high water.

Int. 4. State what, in your judgment, are the hazards and perils to a steamboat in passing through said bridge at Meredosia, and how, especially, collisions with said bridge occur, if they do occur, even with careful and skillful navigators.

Ans. The hazards and perils to a steamboat in passing through said bridge are, that if your boat becomes at all unmanageable, either in daylight or dark, the boat is sure to hit the draw; a boat becoming easily unmanageable there by force of the cross-currents. A man
401 coming down with a steamboat, no matter how careful or skillful navigator he may be, if there be any wind here, it is very uncertain whether he will pass through said bridge without striking.

Int. 5. Have you not personally known of any case or cases where steamers or their tows, in passing through the said bridge, have been injured? and, if so, state the circumstances, and what the causes of such injury.

Ans. I have known several cases where steamers and their tows, in passing through said bridge, have been injured. They came down, tried to avoid, with all possible caution, to hit the bridge, but hit and sunk tows. To my knowledge "Stephen Bayard" sunk a canal-boat that it had in tow. The pilot, Hardin Colter, one considered an excellent pilot, passing through said bridge, steering the "Schuyler," sunk a barge. About a month ago the "Peoria City," a side-wheeler, (a steamboat handled a great easier than any stern-wheeler,) came down through said bridge in broad daylight, and, carefully handled, about 5 o'clock in the afternoon, struck the right-hand pier, and knocked the guard
402 and cook-house all away. The injury amounted to two hundred and fifty dollars. This spring the "City of Pekin" struck the bridge, steered by one of the best pilots on the river, Campbell Moore, and knocked the guard off and drowned a cow. No more careful a pilot steers a steamboat anywhere than the said Campbell Moore. I myself,

altho' no great injury incurred, struck the draw side of the bridge this spring, passing through the said bridge on the "Illinois."

Int. 6. Can you state whether or not there is any custom or usage prevailing as to the liabilities of steamers, in general verbal contracts, for towing on the Mississippi and Illinois Rivers in the absence of special agreements; and, if so, what is such custom or usage. Do such general verbal contracts, or do they not, except the usual dangers and hazards of river navigation?

Ans. I never towboated any, and therefore do not know anything in reference to the general verbal contracts spoken of in interrogatory 6.

Int. 7. Have you or not any knowledge of Capt. Charles S. Ebaugh? and, if so, state what is his character and conduct as to skill, care-
403 fulness, and prudence as a navigator.

Ans. I know Capt. Charles S. Ebaugh well, and have known him ever since 1860. There are no better navigators, in regard to skill, carefulness, and prudence, than Captain Charles S. Ebaugh.

Int. 8. State what, so far as you know, Capt. Ebaugh's opportunities have been to acquire a knowledge of the navigation of the Illinois River?

Ans. As far as I know, if practice and work will make any competent, then Capt. Ebaugh is surely so; for he always has a berth and work if there is anything to do on the river. Ever since I have known him, he has been piloting on the river. He has been captain also of many boats, and I have known him always to stand his watch at the wheel when he was well.

Int. 9. Assuming that the steamer Admiral Farragut, with the canal-boat Ajax in tow on the larboard side, was passing thro' the bridge at Meredosia, at or about 4 o'clock a. m., on the 8th March, A. D. 1866; that the water was at a height when the diagonal current across the passage-way through said bridge is the strongest; that Charles S. Ebaugh
404 was at the wheel; that the steamer Farragut, carefully steered and managed, was, in passing through said bridge, forced towards the piles protecting the east pier of said bridge; and that the canal-boat Ajax came in contact with said piles and was stove and sunk, would or would not such a result be within the ordinary perils and hazard of river navigation?

Ans. Such a staving and sinking of the said canal-boat Ajax, under the circumstances assumed in interrogatory 9, is a result entirely within the ordinary perils and hazards of river navigation. As I have already stated, in answer to a previous interrogatory, in substance at least, that no man has any certain chance in passing through said bridge without hitting it.

Int. 10. State any other matter or thing within your knowledge that may be of advantage to the defendants, owners of the Admiral Farragut.

Ans. All I know as to anything else is, that I don't know how Capt. Ebaugh could have done anything else under the circumstances, as I know to be that kind of a man and a skillful man and a man of good judgment.

405 *Cross-interrogatories.*

X-int. 1. If you say you are acquainted with, and have navigated, the Illinois River at the Meredosia bridge, state how long you have so navigated it, in what capacity, and whether as captain or pilot of steamers for passengers, freight, or towage. State, as nearly as you can, how many times in each year, since the said Meredosia bridge was built,

during the period of high water, you have, as captain or pilot, navigated steamers down through said bridge. State the circumstances of such passage, as to whether you had any boats or barges in tow on those occasions; and, if so, how many?

Ans. I have navigated the Illinois River ever since 1860, in the capacity of pilot for passenger and freight; sometimes had one, two, or three barges in tow. I am engaged nearly the whole period of high water each year; hardly lie over any time. Sometimes we had barges, and at other times none.

X-int. 2. If you say you have navigated said river at the Meredosia bridge, as a pilot, state whether you were at the time regularly
406 licensed for that purpose, and how long you have had such license.

Ans. I have been regularly licensed as a pilot on the Illinois River for 4 years.

X-int. 3. State, while actually engaged in the capacity of pilot, (I mean when you had control personally of the wheel,) how many boat you have sunk in passing down the river, by reason of colliding with the Meredosia bridge, or the piling under the bridge. State the name of the steamer you were piloting when you sunk such boat, how many boats you had in tow at the time, the date or dates on which such losses occurred, the time of day or night, and all the circumstances connected with such collisions and losses; and, if you say you have never sunk any boats at said bridge, state what, if any, accidents, of any kind whatever, you have met with while personally acting as pilot, (I mean when you personally had control of the wheel,) in passing down the river through said bridge. State all the circumstances attending such accidents, as to date, the name of the steamer you were then piloting, how many boats you had in tow, the names of the boats which you injured, the state of the
407 weather, the time of day or night, and particulars as to what damages were done to the boats on these occasions.

Ans. I never sunk any boat in passing down the river. I do not remember at this time to have had any accident, except at one time to have broken a stanchion; I might have hit oftener, but do not recollect it. I then piloted the "City of Pekin;" it was about the month of May, 1864; had one barge in tow; it was windy; it was about 2 o'clock in the afternoon.

X-int. 4. If you say you were not personally acting in the capacity of pilot at the times when such losses or accidents occurred while passing down through said Meredosia bridge, state in what capacity you were acting, and give the name or names of the pilots who had the wheel at the time or times of such losses or accidents, and state whether or not you personally witnessed such losses or accidents; and, if so, state all the facts and circumstances connected with such losses or accidents as to the amount and description of the damage done, the state of the weather at the time, and the hour of the day or night; also how many boats you had in tow at the time, and give the names of the boats
408 you lost or injured.

Ans. The accident spoken of by me in answer to int. 3 occurred when I was piloting, when I had control of the wheel; consequently I have nothing to reply to interrogatory 4.

X-int. 5. If you say there is an usage or custom prevailing on the Illinois and Mississippi Rivers as to the liability of steamers on their towage contracts, please state whether such usage or custom is understood to exempt steamers on their towage contracts from liability for losses arising from negligence or mismanagement on the part of those having

the steamer in charge; and, if you that an usage or custom of some nature is understood and recognized by both parties to the towage contract, please state fully what that usage or custom is, and your means of knowledge as to the recognition of such usage and custom on the part of those who are being towed by such steamers, and state any instances, in your own personal experience, where there has been such recognition on their part, and all the circumstances concerning it; also the circumstances concerning the accidents or losses, where such usage or
409 custom was so recognized by them. State whether or not it was personally agreed to in each individual case, at the time the contract for towage was made, that the boat should be towed at her own risk; and, if so, state the exact words of the contract, and the names of the parties with whom you made such contract, or the names of the boats, so lost or injured, which you towed under such contract.

Ans. I answer to this 5th cross-interrogatory: I repeat what I have said in answer to the 6th interrogatory-in-chief, to wit: I never towboated any, and therefore do not know anything in reference to general verbal contracts as to towage, or any other; and I here add, I know nothing about any custom or usage in regard to it.

(Signed) JOHN S. LEECH.

*Deposition of William H. Dutch.*

AUG. 15, '67.

Int. 1. Are you acquainted with Charles Clark, lately captain of the canal-boat Ajax?

Ans. Yes, sir; I am acquainted with Captain Charles Clark. It seems to me he represented himself to me to be from Chicago.

410 Int. 2. Have you or not had any conversation with said Clark in relation to the loss of the Ajax, in March, 1866, at the Meredosia bridge? and, if so, state where and when said conversation took place, and what was said as to the loss of the Ajax.

Ans. I think that, on the Sunday after the loss of the Ajax, I had a conversation with Charles Clark, in Beardstown, Illinois. Well, I had heard of the sinking of the Ajax, Capt. Clark's canal-boat; he was then commanding. I do not remember the name of the boat; the name Ajax seems to strike me as the name, yet I cannot be positive. I think the conversation took place near the end of February, or the beginning of March, 1866. In my conversation with Capt. Clark, I remarked to him that he had met with quite a heavy loss, but supposed that he was very well satisfied that himself and wife were not drowned, as were Mr. Craig and wife. I think he replied that they, meaning himself and wife, made a very narrow escape. I asked Mr. Clark who was at the wheel. He answered, Captain Ebaugh. I made the remark to Captain Clark, that if it had been any one else besides Captain Ebaugh, they would
411 have caught hell. Captain Clark remarked to me that he did not suppose that any human power could have prevented the accident, saying that, if there was any fault, it was by being too careful and not having sufficient headway to carry the tow through the bridge. I asked Captain Clark if his boat was insured. He said it was, and remarked that it was not insured for its full value. I also asked Captain Clark if my brother's grain was insured. He replied, it was. I then asked him if there would be any trouble of getting his insurance. He replied that he thought not; that he did not believe that there was any one to blame; that it was an unavoidable accident.

*Cross-interrogatories.*

X-int. 1. If you say you have had a conversation with Captain Clark in relation to the loss of the Ajax, you will please state the time and place of said conversation, and give the names of all who were present at the time; also the names of such as joined in the conversation, and what was said by each of said individuals respectively, giving their,
412 and each of their, exact language, as near as you can.

Answer. I have above given the time of said conversation. It took place, as I said before, in Beardstown, Illinois, at the Park Saloon. I cannot give any names of those who were present at the time, except the bar-keeper, Mr. Fiddler. Mr. Clark and I were in conversation by ourselves. Nobody, I think, joined in the conversation. I do think, however, that Mr. Fiddler, listening to our conversation, remarked that he hoped that Mr. Clark would have no trouble in getting his insurance, saying that "this is too pad for him to lose your boat," (saying it in Dutch brogue.) That is all.

(Signed) WILLIAM H. DUTCH.

*Deposition of Theodore L. McEvers.*

AUG. 19, '67.

Int. 1. What is your name, age, place of residence, and occupation?

Ans. Theodore L. McEvers; I am 48 years old; I reside at Montezeuma, Pike County, Illinois.

Int. 2. Have you or not any knowledge of the navigation of the
413 Illinois River? and, if so, state your opportunities and means of knowledge.

Ans. I have some knowledge of the navigation of the Illinois River. I have some 10 or 12 years' experience of steamboating; about the larger half of which I ran a boat upon my own responsibility on the Illinois River.

Int. 3. Are you or not acquainted with the situation of the railroad bridge at Meredosia, and the direction of the currents of the river at that point; and, if so, in what direction does the Illinois River run down to the point; in what direction does the river run as it leaves said bridge; are there or not any currents affecting boats passing through said bridge; and if there are currents, how do they affect boats passing through said bridge; and what is the effect, if any, of high-water aforesaid upon said currents?

Ans. I am acquainted with the railroad bridge at Meredosia, and the direction of the currents of the river at that point. The currents of the river run on a circle with the bend of the river, the river there making a short bend. The river runs tolerably fair with the direction of the draw as it leaves said bridge. The current does affect boats passing through said bridge. High water increases the current aforesaid.

414 Int. 4. State what, in your judgment, are the hazards and perils to a steamboat in passing through said bridge at Meredosia, and how, especially, collisions with said bridge occur, if the do occur, even with careful and skillful navigators.

Ans. The hazards and perils to a steamboat in passing through said bridge are as follows: To have control of a steamboat coming down the stream, you want sufficient headway faster than the current to have steerage-way; and then, in case you strike the bridge, you strike it pretty hard.

In case the wind is setting from the west, and you undertake to come through the bridge without running a stern-line ashore, which is very difficult to do, or dropping an anchor, either you are liable to be flanked over into the east pier or piling. Even with careful and skillful navigation it makes no difference.

Int. 5. Have you not personally known of any case or cases where steamers or their tows, in passing through the said bridge, have been injured? and, if so, state the circumstances, and what the causes of such injury.

Ans. I have known cases where the fenders and guards of
415 steamers were knocked off where they have run against the pier and broke the tow up; one of the tows I speak of came very near sinking.

Int. 6. Can you state whether or not there is any custom or usage prevailing as to the liabilities of steamers in general verbal contracts for towing on the Mississippi and Illinois Rivers, in the absence of special agreements; and, if so, what is such custom or usage? Do such general verbal contracts, or do they not, except the usual dangers and hazards of river navigation?

Ans. I do not know of any liability whatever, only arising from the officers not doing his duty. I never knew of any custom or usage, nor did I ever know of, nor did I ever make, any special agreement by which any liability whatever is imposed upon the steamer from the tow. Usual dangers and hazards of river navigation—such is my understanding ever since I have been boating—are always excepted, and I have frequently hired barges out to steamboats to be returned in good order, usual wear and tear and liabilities of navigation as unavoidable to be excepted.

This hiring I always did under special agreements, except when
416 I had confidence in a man, I would risk the hazards and not require such contracts, because, if I had not made such contract, it would have been subject to the same general custom and usage if anything or injury should have occurred, namely, to have forfeited the barge or barges; but whenever steamers take canal-boats or other boats in tow, it is always understood, in the absence of special agreements, that they fasten at their own risk. I have towed boats considerably. I have never considered myself liable for any unavoidable accidents; and I so felt and acted, because it was and still is, as far as I know, the generally prevailing custom or usage.

Int. 7. Have you or not any knowledge of Captain Charles S. Ebaugh? and, if so, state what is his character and conduct as to skill, carefulness, and prudence as a navigator.

Ans. I have always considered Capt. Ebaugh as one of the best rivermen—pilot and captain. I mean in respect to his boating skill. I always took him to be a very careful man. He has towed barges for me years ago, and I never knew his having a serious accident of any kind;
417 and what I have stated just now is his reputation generally as a steamboat-man. I have frequently heard others express themselves in the same light.

Int. 8. State what, so far as you know, Capt. Ebaugh's opportunities have been to acquire a knowledge of the navigation of the Illinois River.

Ans. I knew his following the river as a steamboat-man, piloting and mastering, and a number of different boats for the last more than 15 years.

Int. 9. Assuming that the steamer Admiral Farragut, with the canal-boat Ajax in tow, on the larboard side, was passing through the bridge

at Meredosia, at or about 4 o'clock a. m., on the 8th March, A. D. 1866; that the water was at a height when the diagonal current across the passage-way through said bridge is the strongest; that Charles S. Ebaugh was at the wheel; that the steamer Farragut, carefully steered and managed, was, in passing through said bridge, forced toward the piles protecting the east pier of said bridge; and that the canal-boat Ajax came in contact with said piles and was stove and sunk; would or would not such a result be within the ordinary perils and hazards of river navigation?

418 Ans. It is a plain case. Assuming all the circumstances detailed in the interrogatory, (number nine,) the result most undoubtedly is and lies within the ordinary perils and hazards of river navigation.

Int. 10. State any other matter or thing within your knowledge that may be of advantage of the defendants, the owners of the Admiral Farragut.

Ans. I consider s'id bridge an obstruction to navigation. At the very erection of the bridge I told the builders of it that they were putting the draw in the wrong place. It should have been situated near the western shore.

*Cross-interrogatories.*

X-int. 1. If you say you are acquainted with and have navigated the Illinois River at the Meredosia bridge, state how long you have so navigated it; in what capacity, whether as captain or pilot of steamers for passengers, freight, or towage. State, as nearly as you can, how many times in each year, since the said Meredosia bridge was built, during the period of high water, you have, as captain or pilot, navigated steamers down through said bridge. State the circumstances of

419 such passage, as to whether you had any boats or barges in tow on those occasions; and, if so, how many.

Ans. I have acted off and on for the last 10 or 12 years, both as master and pilot. Some seasons I ran in the just stated capacities the whole season, and at others less; also since the Meredosia bridge was built.

X-int 2. If you have navigated said river at the Meredosia bridge as pilot, state whether you were at the time regular licensed for that purpose, and how long you have had such license.

Ans. I have been licensed as a pilot for the last 5 or 6 years.

X-int. 3. State, while actually engaged in the capacity of pilot, (I mean when you had control of the wheel,) how many boats you have sunk in passing down the river, by reason of colliding with the Meredosia bridge, or the piling under the bridge. State the name of the steamer you were piloting when you sunk such boats; how many boats you had in tow at the time, the date or dates on which such losses occurred, the time of day or night, and all the circumstances connected with such collisions and losses; and if you say you have never

420 sunk any boats at said bridge, state what, if any, accidents of any kind whatever you have met with while personally acting as pilot (I mean when [when] you personally had control of the wheel) in passing down the river through the said bridge. State all the circumstances attending such accidents, as to date, the name of the steamer you were then piloting, how many boats you had then in tow, the names of the boats which you injured, the state of the weather, the time of

day or night, and particulars as to what damages were done to the boats on these occasions.

Ans. I have never sunk any boat whatever.

X-int. 4. If you say you were not personally acting as pilot at the time when such losses or accidents occurred while passing down through said Meredosia bridge, state in what capacity you were acting, and give the name or names of the pilots who had the wheel at the time or times of such losses or accidents; and state whether or not you personally witnessed such losses or accidents; and, if so, state all the facts and circumstances connected with such losses or accidents, as to the amount and description of the damage done, the state of the weather at
421 the time, and the hour of the day or night; also how many boats you had in tow at the time, and give the names of the boats lost or injured.

Ans. I refer to my last the answer to cross-interrogatory third.

X-int. 5. If you say there is an usage or custom prevailing on the Illinois and Mississippi Rivers as to the liability of steamers on their towage contracts, please state whether such usage or custom is understood to exempt steamers on their towage contracts from liability for losses arising from negligence or mismanagement on the part of those having the steamer in charge; and if you say that an usage or custom of some nature is understood and recognized by both parties to the towage contract, please state fully what that usage or custom is, and your means of knowledge as to the recognition of such usage and custom on the part of those who are being towed by such steamers; and state any instances in your own personal experience where there has been such recognition on their part, and all the circumstances concerning it, and also the circumstances concerning the accidents or losses
422 when such usage or custom was so recognized by them. State also whether or not it was personally agreed to in each individual case, at the time the contract for towage was made, that the boat should be towed at her own risk; and, if so, state the exact words of the contract, and the names of the parties with whom you made such contract, or the names of the boats so lost or injured which you towed under such contract.

Answer. Whenever I towed a boat or boats I never made any special agreements. Not always knowing the name of either master or boat. I told them that they fasten at their own risk; that is, whenever anything was said about their towing. When the wind has been too high tows have requested me to land them rather than incur damages on their part, and I would land them and bring them to town on another trip. Ever since the license law has been issued, and boatmen have been compelled to employ only licensed pilots, we considered on the hiring of licensed men we filled the letter of the law, and were released from liabilities arising from unavoidable accidents. And I further say, that negligence and mismanagement on the part of these licensed men,
423 although it is difficult for me to conceive of such a case, the case of carefully examined and licensed pilots, does not change the status, and throws no more liability on the steamer. If the steamer, or its master, does its best, especially by legally employing a licensed pilot, you can expect no more. For the further I would refer to my answer to the sixth interrogatory-in-chief.

(Signed) T. L. McEVERS.

Depositions of D. J. Hancock, J. Campbell Moore, and Thomas Hunter, in behalf of claimants, taken before Henry S. Lasar, special commissioner, at his office, in the city of St. Louis, Missouri, on the 30th day of November, and the 2nd day of December, A. D. 1867.

*Deposition of D. J. Hancock.*

NOV. 30, '67.

Int. 1. What is your age, place of residence, and occupation?

Ans. I am 49 years old; reside in the city of St. Louis; am,
424 and have been for the last 8 years past, president of the Illinois River Packet Company.

Int. 2. Have you any knowledge of Capt. Charles S. Ebaugh, and of his capacity and competency as a navigator and pilot? and, if so, state what is his character and conduct, with reference to skill and prudence.

Ans. Yes; I have knowledge of Ebaugh's capacity and competency as a navigator and pilot. His character is good for skill, and is an energetic and enterprising boatman. He has generally been successful with and in all his boating, which may be considered a good criterion of his prudence.

Int. 3. Do you know what is Captain Charles S. Ebaugh's acquaintance with the navigation of the Illinois River, and what opportunities he has had of acquiring a knowledge of the Illinois River? and, if so, state them.

Ans. To my knowledge he has navigated the river successfully for the past 12 years or more in the capacity of master and pilot.

Int. 4. Do you know anything personally of the circumstances of the loss of the canal-boat "Ajax" while in tow by the "Admiral Far-
425 ragut," about the 8th March, 1866, near the railroad bridge at Meredosia, Illinois? and, if so, state them.

Ans. I know nothing at all about it personally.

Int. 5. Have you or not any knowledge of the navigation of the Illinois River, and what opportunity, if any, have you had of acquiring such knowledge?

Ans. I have been up and down the river frequently, and largely interested in boats running that river for the last 10 years and more.

Inter. 6. Are you or not acquainted with the situation of the bridge at Meredosia, and the course of the Illinois River at that point; and, if so, state in what direction the river runs up to the point where the bridge is located; and in what direction does it run as the river leaves the bridge; are there or not any currents affecting the passage-way left for boats through said bridge; and if there are such currents, how do they affect said passage-way; and what, if any, is the effect of high and low water on said currents?

Ans. I am acquainted with the situation of the bridge at Meredosia, and the course of the Illinois River at that point. The course of
426 the river above the bridge is east and southeast; about the time it reaches the bridge it turns southwesterly, and after leaving the bridge it continues a little west of southwest. When the river overflows its banks there are currents caused by the railroad bridge embankment on the west bank of the river, affecting the passage-way left for boats through said bridge. They affect said passage-way by running almost directly across the passage-way from west to east. These currents affect said passage-way only at high water.

Int. 7. State, if within your knowledge, what is the width of the passage-way left for boats through said bridge. Describe said bridge,

and state whether or not there are any piles extending out from said bridge; and, if so, how are they placed?

Ans. I do not exactly recollect its width, having never measured the same. I should judge it in the neighborhood of 100 feet. It is a usual railroad draw-bridge. There are piles extending out from said bridge on the upper side of the piers, but not properly placed so as to protect boats entering the draw.

427 Int. 8. Have you or not personally known of any case where there has been an injury to a steamer or her tow in passing through the bridge at Meredosia; and, if so, state the circumstances and what the causes of the injury.

Ans. I have known of a number of collisions with the bridge, and losses sustained thereby, both to steamers and tows, in passing through said bridge.

Int. 9. State what, in your judgment, are the hazards and perils of passing through the bridge at Meredosia to steamers and their tows, and how, especially, collisions with the bridge or piling occur, if they do so occur, even with careful and skillful navigation.

Ans. The hazard at high water, and in windy weather, or dark nights, are great, and it requires great caution and good management to pass through it in daylight, under favorable circumstances, without coming into collision with the piling or piers of the bridge. Collisions especially occur during high winds, or the cross-currents at high-water. Accidents here sometimes occur in spite of the most careful and skillful navigation.

428 Int. 10. State whether or not, previous to the opening of navigation in the spring of 1866, there had been any addition of timbers and braces to the piling extending out from said bridge; and, if so, what additions had been made, and what was the effect of said additions, if any, to increase or diminish the hazard to boats and their tows passing through said bridge?

Ans. Some time after the opening of navigation in the spring of 1866, passing through the bridge, I noticed that some new timbers had been placed in the piers and the piling above the piers. It had the effect of stiffening the piling above the bridge, and, as the bridge is an encumbrance to navigation, every addition thereto increases the encumbrance. The piling, being thus stiffened, would of course no longer yield so readily to boats colliding with the piling as it was the case previously, so that boats now had necessarily to be more endangered by coming in collision with these now stiffened pilings.

Int. 11. Are you or not acquainted with the usages and customs prevailing on the Illinois River; and, if so, can you state whether or not there is any custom or usage as to general contracts for towing

429 canal or other boats? Do such general contracts, by custom or usage, in the absence of special agreements, or do they not, except the ordinary dangers and hazards of river navigation?

Ans. Not being interested in canal-boats, but largely so in barges, I know that the general contracts governing the towing of them, the steamboats towing them are exempt from the ordinary risks of navigation, as applied generally to the exceptions which carriers make in their contracts or bills of lading for the transportation of goods. I have always understood the same principles to govern both the contract for affreightment and contracts for towing, in the absence of special agreements. I always, in hiring barges out to be towed on the Illinois River, make an absolute contract to deliver the barge back, without any exception whatever.

Int. 12. Assuming that the steamer "Admiral Farragut," with the canal-boat "Ajax" in tow on the larboard side, was passing through the bridge at Meredosia, at about 4 o'clock a. m., on the 8th day of March, A. D. 1866; that the water in the Illinois River was at a height when the diagonal current across the passage was the strongest; 430 that a careful, sober, and skillful pilot was at the wheel on the passage through the bridge; that the steamer was carefully managed, but by the strength of the diagonal current was forced against the piles extending out for the protection of the east pier; and that the canal-boat "Ajax" came into contact with the piles and was stove and sunk, would or would not such a result be within the ordinary dangers and hazards of river navigation?

Ans. Assuming the state of facts given in the interrogatory, the result, as stated, would be within the ordinary dangers and hazards of river navigation at that point.

Int. 13. State any other matter or thing within your knowledge that may be of advantage to the defendants.

Ans. I do not know anything special, except that all the bridges across the Illinois River greatly endanger its navigation.

*Cross-interrogatories.*

X-int. 1. If you say you are [not] acquainted with the navigation of the Illinois River at the Meredosia bridge, state how long you have been so acquainted; also state in what capacity, if any, you have navi- 431 gated said river—whether as captain or pilot; and, if either, whether you are and were at the time you first commenced, and during the time you were engaged in such navigation, regularly licensed for that purpose. State how many times you have passed through said Meredosia bridge during the time you have been engaged in navigating said river.

Ans. I am neither master nor pilot, but have sometimes had charge of our boats for a trip at the time; but in passing through said bridge I always allowed the pilot to manage the boat as he might think best. I have passed through the bridge frequently, but cannot tell how many times.

Cross-int. 2. State the name or names of such vessels or steamers upon which you have ever acted as either captain or pilot on said Illinois River, and state all the business in which such vessels or steamers were then engaged, whether as tow-boats of freight-boats.

Ans. For my answer to this x-interrogatory I would refer to my last answer.

X-int. 3. State whether or no, during the time you have been 432 so engaged in the navigation of said river, you have ever met with any accident or collision while passing through the Meredosia bridge; and, if so, state when, at what hour of the day or night; state the nature of such accident or collision, what damage was done, and all the circumstances with such accident or collision.

Ans. There has scarcely been a year but our boats have suffered more or less injury by colliding with said bridge. The more recent ones are: Peoria City in this year ran against the piers of the bridge, damaging the guards; City of Pekin, also in this year, ran against the larboard pier, knocking off considerable (nearly half) of her larboard guards and carrying some freight with it. During last year, the Schuyler, having a barge in tow, collided a barge with said bridge and sunk it. During the year 1864 or 1865 the steamer "Die Vernon" collided with the piers of said bridge, damaging her wheel and wheel-house. I think two of the accidents named occurred in the day and two at night time.

X-int. 4. State whether or not in passing through said bridge it is necessary to exercise caution; and, if so, what action is necessary
433 under different circumstances, and what different circumstances may exist at different times. State fully every act of caution necessary to be taken, under any circumstances, to insure a safe passage through said bridge from the time of leaving Meredosia landing, taking said Meredosia landing as a starting point.

Ans. It is positively necessary to exercise caution in passing through said bridge, but what action is necessary is governed by the particular circumstances governing the passage of each boat, before or at the time of entering the draw, as two boats seldom get in the same position as they pass down the river, preparatory to entering the draw.

X-int. 5. State whether or not, to your knowledge, there is any written or printed rule, relating to the navigation of the Illinois River, which binds parties in their contracts for towage, or exempts those entering into towage contracts from liability for loss by collision or mismanagement on the part of those contracting to tow.

Ans. I do not know of the existence of any such rules.

(Signed) D. J. HANCOCK.

434 *Deposition of J. Campbell Moore.*

DEC. 2, '67.

Int. 1. What is your age, place of residence, and occupation?

Ans. I am 48 years old; I reside at Peoria, Illinois; and am pilot on the Illinois River.

Int. 2. Have you any knowledge of Capt. Charles S. Ebaugh, and of his capacity and comptency as a navigator and pilot? and, if so, state is what his character and conduct with reference to skill and prudence.

Ans. I have known Capt. Charles S. Ebaugh as a pilot and boatman for 12 or 15 years. I have never heard anything derogatory to his character as a pilot, althoug I have met and do meet him very frequently. He has been as successful in boating as any other boatman, so far as my knowledge goes.

Int. 3. Do you know what is Capt. Charles S. Ebaugh's acquaintance with the navigation of the Illinois River, and what opportunities he has had of acquiring a knowledge of the Illinois River? and, if so, state them.

Ans. Well, I think he has good, plentiful opportunities to understand the navigation of that river. It has been his business
435 and interest to study its navigation. I have known Ebaugh as master or pilot on that river for from 10 to 14 years.

Int. 4. Do you know anything personally of the circumstances of the loss of the canal-boat Ajax while in tow by the "Admiral Farragut," about the 8th March, 1866, near the railroad bridge at Meredosia, Illinois? and, if so, state them.

Ans. I do not.

Int. 5. Have you or not any knowledge of the navigation of the Illinois River; and what opportunity, if any, have you had of acquiring such knowledge?

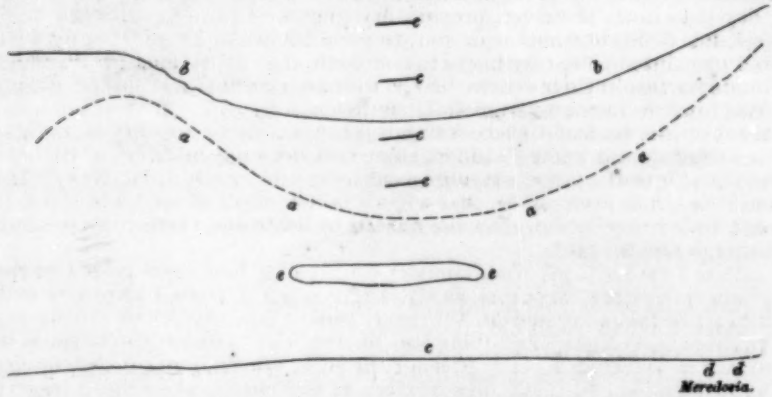
Ans. I have commanded and piloted on the Illinois River for about 22 years. It has been my business very nearly altogether for that period of time.

Int. 6. Are you or not acquainted with the situation of the bridge at Meredosia, and the course of the Illinois River at that point? and, if so, state in what direction the river runs up to the point where the bridge

is located; and in what direction does it run, as the river leaves the bridge; are there or not any currents affecting the passage-way
436 left for boats through said bridge; and if there are such currents, how do they affect said passage-way; and what, if any, is the effect of high and low water on said currents?

Ans. I know well where said bridge is located.

(Here the witness, that, in regard to the direction the river runs, both up to the point where the bridge is located, as well as where it leaves said bridge, he could make himself best understood by a diagram, when he himself drew the following:)




*a*, current or channel; *b*, west shore; *c*, bridge; *d*, Meredosia landing; *e*, draw.

When the water is high, it overflows the western bank, and I think the water, being confined by the embankment of the railroad, which extends over this bottom, creates a reaction, or current, going across toward the draw pier. These currents affect the passage-way in such a manner as to cause a boat going down or up stream to drift
437 toward the draw-pier on the eastern shore. The higher the water, the more the said passage-way is affected.

Int. 7. State, if within your knowledge, what is the width of the passage-way left for boats through said bridge. Describe said bridge, and state whether or not there are any piles extending out from said bridge; and, if so, how are they placed?

Answer. The passage-way is wide; I should think from 120 to 130 feet. It is a bridge resting on wooden trestle and stone abutments; a drawbridge. There are piles extending out the length of the draw, probably more, up and down.

Int. 8. Have you or not personally known of any case where there has been an injury to a steamer, or her tow, in passing through the bridge at Meredosia? and, if so, state the circumstances and what the causes of the injury.

Ans. I have never known any personally, except that last spring the steamer I piloted through had struck the draw spiling and knocked off some 30 or 40 feet of her larboard guards. It was the City of Pekin. I have heard of several barges and canal-boats sunk there. The main cause in the City of Pekin knocking off her guards lay in this
438 cross-current I have described, and when I struck the draw spiling, I was as confident I would strike the other side, rather than

strike the side I did strike; but in order to make myself clearly understood, as I was coming to the bridge, I was running for the starboard pier, that is, going down stream; I thought I was running so close to the starboard pier, that I feared I might strike it. Then I pulled my wheel from it, to pull my boat from the starboard pier, and immediately then I observed that she was drifting to the draw-pier, and at once struck the draw spilings on the other side.

Int. 9. State what, in your judgment, are the hazards and perils of passing through the bridge at Meredosia, to steamers and their tows, and how, especially, collisions with the bridge or piling occur, if they do so occur, even with careful and skillful navigators.

Ans. I think that the hazards and perils of passing through said bridge are the collisions with the same. They occur by striking against the draw-pier, caused by the action of current or cross-currents, drifting the boats unto the draw-pier. No matter how careful and skillful a navigator may be, the draw is there anyhow.

439 Int. 10. State whether or not, previous to the opening of navigation in the spring of 1866, there had been any addition of timbers and braces to the piling extending out from said bridge; and, if so, what additions had been made, and what was the effect of said additions, if any, to increase or diminish the hazard to boats and their tows passing through said bridge?

Ans. I rather think that timbers and braces had been added to the piling extending out from said bridge, when I passed through said bridge, in the latter end of February, 1866. But this I can testify unqualifiedly, that such additions had to, and did, increase the hazards to steamers and their tows in passing through, by stiffening the structure formed by the additional logs or timbers preventing the spiling to give or spring, as boats came against them. Now they hardly give any, and consequently endanger boats the more.

Int. 11. Are you or not acquainted with the usages and customs prevailing on the Illinois River; and, if so, can you state whether or not there is any custom or usage as to general contracts for towing canal or other boats? Do such general contracts, by custom or usage,

440 in the absence of special agreements, or do they not, except the ordinary dangers and hazards of river navigation?

Ans. I know the customs or usages prevailing on the Illinois River. I know, too, that general contracts for towing, in the absence of special agreements, except the ordinary dangers and hazards of river navigation.

Int. 12. Assuming that the steamer "Admiral Farragut," with the canal-boat Ajax in tow on the larboard side, was passing through the bridge at Meredosia, at about 4 o'clock a. m., on the 8th day of March, A. D. 1866; that the water in the Illinois River was at a height when the diagonal current across the passage-way was the strongest; that a careful, sober and skillful pilot was at the wheel during the passage through the bridge; that the steamer was carefully managed, but, by the strength of the diagonal current, was forced against the piles extending out for the protection of the east pier; and that the canal-boat Ajax came into contact with the piles, and was stove and sunk, would or would not such a result be within the ordinary dangers and hazards of river navigation?

Ans. Taking all the facts and circumstances mentioned in the

441 interrogatory for granted, the result there noted would be within the ordinary dangers and hazards of river navigation.

Int. 13. State any other matter or thing within your knowledge that may be of advantage to the defendants.

Ans. Considering all bridges on the Illinois River an obstruction to navigation, and this bridge at Meredosia as the worst one on it, the hazards and dangers are much increased thereby. I would add to all I have testified in this my examination-in-chief, that the passing through said bridge, whether with much or little headway, is altogether dependent upon different circumstances. At times we drop through the passage-way; at other times we force her through with much steam. I add this, as I had not been asked with how much or how little steam the passing through said draw should be effected.

*Cross-interrogatories.*

X-int. 1. If you say you are acquainted with the navigation of the Illinois River at the Meredosia bridge, state how long you have
442 been so acquainted. Also state in what capacity (if any) you have navigated said river; whether as captain or pilot, and if either, whether you are and were at the time when you first commenced, and during the time you were engaged in such navigation, regular licensed for that purpose. State how many times you have passed through said Meredosia bridge during the time you have been engaged in navigating said river.

Ans. I have been navigating the Illinois River, as captain and pilot, for the last 22 or 23 years, almost without interruption. I have been licensed ever since the law requiring license has been passed. I have passed through said bridge more than 300 times.

X-int. 2. State the name or names of such vessels or steamers upon which you have ever acted as either captain or pilot, on said Illinois River, and state also the business in which said vessels or steamers were then engaged, whether as tow-boats or as freight-boats.

Ans. I cannot tell all the names of steamers or vessels I have ever acted on. It would be a considerable list of them, both as tow and freight boats. I have not been in the exclusive towing business since the bridge has been built, except in towing barges in connection
443 with steamers.

X-int. 3. State whether or no during the time you have been so engaged in the navigation of said river, you have ever met with any accident or collision while passing through the Meredosia bridge; and, if so, state when, at what hour of the day or night; state the nature of such accident or collision, what damage was done, and all the circumstances with such accident or collision.

Answer. I refer for my answer to this cross-interrogatory to my answer given to interrogatory-in-chief number eight, (8,) with this addition: that that accident to the City of Pekin there mentioned occurred during the night.

X-int. 4. State whether or not, in passing through said bridge, it is necessary to exercise caution; and, if so, what action is necessary under different circumstances, and what different circumstances may exist at different times. State fully every act of caution necessary to be taken, under any circumstances, to insure a safe passage through said bridge from the time of leaving Meredosia landing, taking said Meredo-
444 sia landing as a starting-point.

Ans. It is absolutely necessary to exercise caution in passing through said bridge, at all times and under any circumstances; and the higher the water is the more caution you have to exercise, on account

of the cross-current. If there be a westerly wind with the cross-current which prevails at high water, it makes the passage so much more difficult. It would be hard for any man to tell what action would be necessary except he would be on the spot. It would depend on weather, wind, currents, and boat. If wind and current, everything, were adverse to me, I put on all the steam I could put on, and get through the passage-way as fast as possible; and at another time again, I would merely drop the boat through. At times it is an act of caution, when it can be done, to get the boat out from the said landing into the stream, so as to get straight with the bridge. But when the wind is adverse, we cannot resort to this act of caution, and have to go right for the bridge.

X-int. 5. State whether or not, to your knowledge, there is any written or printed rule relating to the navigation of the Illinois River,
445 which binds parties in their contracts for towage, or exempts those entering into towage contracts from liability for loss from collision or mismanagement on the part of those contracting to tow.

Ans. I do not know of any such rules.

(Signed) J. C. MOORE.

*Deposition of Thomas Hunter.*

DEC. 2, '67.

Inter. 1. What is your age, place of residence, and occupation?

Ans. I am 50 years old. I reside in St. Louis sometimes, and sometimes in Peru; I am a steamboat-man, sometimes as captain, and at others as pilot.

Int. 2. Have you any knowledge of Capt. Charles S. Ebaugh, and of his capacity and competence as a navigator and pilot? and, if so, state what is his character and conduct with reference to skill and prudence.

Ans. I have known Capt. Ebaugh as captain and pilot since about 1855 or 1856. I have known him as a pilot as early as 1853. I
446 never heard anything against him, either as a captain or a pilot. I would as lief trust him as any man I know of.

Int. 3. Do you know what is Capt. Cha's S. Ebaugh's acquaintance with the navigation of the Illinois River, and what opportunities he has had of acquiring a knowledge of the Illinois River? and, if so, state them.

Ans. I think his acquaintance with the river is very good. He has had excellent opportunities, having navigated said river as captain and pilot, as long as I said above, and it may have been for a still longer period; but that is all as far as I know.

Int. 4. Do you know anything personally of the circumstances of the loss of the canal-boat Ajax while in tow by the Admiral Farragut, about the 8th March, 1866, near the railroad bridge at Meredosia, Illinois? and, if so, state them.

Ans. I do not know anything personally about that.

Int. 5. Have you or not any knowledge of the navigation of the Illinois River, and what opportunity, if any, have you had of acquiring such knowledge?

Ans. I commenced learning as steersman in June, 1847, and
447 continued steamboating ever since on the Illinois River, as captain and pilot, with the exception of a portion of the summer and fall of 1856, when I ran as captain on the Upper Mississippi; and since the war I ran as captain occasionally between this city and Nashville, and this city and Memphis. With these exceptions just stated, I steam-

boated on the Illinois River ever since 1847; that is, it includes all the work I have done.

Int. 6. Are you or not acquainted with the situation of the bridge at Meredosia, and the course of the Illinois River at that point? and, if so, state in what direction the river runs up to the point where the bridge is located; and in what direction does it run as the river leaves the bridge? Are there or not any currents affecting the passage-way left for boats through said bridge; and, if there are such currents, how do they affect the passage-way, and what, if any, is the effect of high and low water on said currents?

Ans. I know the situation of the Meredosia bridge, and the course of the Illinois River at that point.

(Here the witness was shown the diagram as drawn by the last witness, J. Campbell Moore, when he replied that it fully represented
448 the situation of bridge, shore, currents, &c., &c., with the exception that the western shore, both above and below the bridge, makes more of a point than shown on the diagram. With this exception, this witness, Thomas Hunter, fully concurs in the diagram, and gives it as his testimony as in answer to the interrogatory.)

Here the witness continued: When the river is high the water gets all over the bottom there on the western shore from 1½ to miles in extent, over which the embankment thrown up by the railroad runs, except a small opening in the embankment, consequently a great portion of the water has to come round into the river, which makes a cross-current there at the bridge. In high water the current is much stronger than at low water; coming round the point just immediately above the bridge, the boat flanking by its own weight and driven by the cross-current, the boat naturally is drifted toward the eastern pier.

Int. 7. State, if within your knowledge, what is the width of the passage-way left for boats through said bridge; describe said bridge, and state whether or not there are any piles extending out from said bridge; and, if so, how are they placed?

Answer. The passage-way through said bridge is about from
449 100 to 110 feet wide. It is a bridge supported upon trestle-work with stone buttments—a drawbridge. There are piles fastened above the stone pier by the draw, or, if you please, on the western side of the draw; and there are two rows of piles all along the length of the draw above the draw-pier.

Int. 8. Have you or not personally known of any case where there has been an injury to a steamer, or her tow, in passing through the bridge at Meredosia? and, if so, state the circumstances, and what the causes of the injury.

Answer. I never had an accident there myself but once; I was on the steamer "La Salle," coming down the river; the steamer "Lacon" was going up, and we collided in the bridge. I could not stop on account that the boat would have swung round by the current, and in all probability would have either smashed or sunk our boat; as it was, I ran into the other boat and mashed her guards and broke some of her side-timbers; broke our guards some.

Inter. 9. State what, in your judgment, are the hazards and perils of passing through the bridge at Meredosia to steamers and their
450 tows, and how, especially, collisions with the bridge or piling occur, if they do so occur, even with careful and skillful navigation.

Answer. My experience as pilot and captain ever since the bridge has been built, that every boat that passes down through there is in danger

of being injured, either passenger, freight, or tow-boats. I have had to lay up nights there, and sometimes in the daytime, on account of wind, fearing to pass through there. All the principal collisions that have occurred have been against the east pier, notwithstanding the most careful and skillful navigation.

Inter. 10. State whether or not, previous to the opening of navigation in the spring of 1866, there had been any additions of timber and braces to the piling extending out from said bridge; and, if so, what additions had been made, and what was the effect of said additions, if any, to increase or diminish the hazard to boats and their tows passing through said bridge?

Ans. When I came there, it was some time in March last year, all that I observed was a lot of drift-timbers to have got fastened between the draw and the eastern shore. There was also some drift against the spiling of the west pier, both of which increased the current.
451 At this same time, I think, I observed some timbers and braces bolted across the spiling of the east pier, which stiffened the structure and increased the danger, if you came in contact with it, as the spiling then were not as ready to yield as before.

Int. 11. Are you or not acquainted with the usages and customs prevailing on the Illinois River; and, if so, can you state whether or not there is any custom or usage as to general contracts for towing canal or other boats? Do such general contracts, by custom or usage, in the absence of special agreements, or do they not, except the ordinary dangers and hazards of river navigation?

Answer. I am acquainted with the usages or customs prevailing on the Illinois River. In the absence of special agreements the custom is that everything is towed at the owner's risk, the owner of canal-boat or barge as towed by steamer. This custom, too, excepts the ordinary dangers and hazards of river navigation.

Int. 12. Assuming that the steamer Admiral Farragut, with the canal-boat Ajax in tow on the larboard side, was passing through the bridge at Meredosia at about 4 o'clock a. m., on the 8th day of March,
452 A. D. 1866; that the water in the Illinois River was at a height when the digaonal current across the passage-way was the strongest; that a careful, sober, and skillful pilot was at the wheel on the passage through the bridge; that the steamer was carefully managed, but, by the strength of the diagonal current, was forced against the piles extending out for the protection of the east pier; and that the canal-boat Ajax came into contact with the piles and was stove and sunk; would or would not such a result be within the ordinary dangers and hazards of river navigation?

Answer. It would be within the ordinary dangers and hazards of river navigation.

Int. 13. State any other matter or thing within your knowledge that may be of advantage to the defendants.

Ans. In addition to what I have said above, I will state that when the river is high and the current strong, coming through there with canal-boat or barge, I consider it the safest way to come through as fast as possible. The danger in working a boat slow through the passage-way gives her a chance to drift towards the piers, and increases
453 the danger of accident. In coming through with very high tows, such as of 5,000 tons, or more or less, we back up and float through with the current, as we can steer those larger boats better when backing them. I may further add that I have been engaged in towing ice-boats at the spring season of the year for the last 4 years.

*Cross-interrogatories.*

X-int. 1. If you say you are acquainted with the navigation of the Illinois River at the Meredosia bridge, state how long you have been so acquainted; also state in what capacity (if any) you have navigated said river, whether as captain or pilot, and if either, whether you are, and were at the time when you first commenced, and during the time you were engaged in such navigation, regularly licensed for that purpose; state how many times you have passed through the said Meredosia bridge during the time you have been engaged in navigating said river.

Ans. For an answer to this cross-interrogatory I refer to my answer to the fifth interrogatory-in-chief, with the addition that I have
454 been regularly licensed ever since the law requiring licenses came in force. I passed through said bridge, without being able to indicate the number of times, from 20 to 100 times a year ever since the bridge was built.

X-int. 2. State the name or names of such vessels or steamers upon which you have ever acted as either captain or pilot on said Illinois River, and state also the business in which such vessels or steamers were engaged, whether as tow-boats or as freight-boats.

Ans. I have acted, as far as I can recollect, on some from 50 to 75 vessels or steamers on the Illinois River, either as captain or pilot. They were freight and tow and passenger boats.

X-int. 3. State whether or no, during the time you have been so engaged in the navigation of said river, you have ever met with any accident or collision while passing through the Meredosia bridge; and, if so, state when, at what hour of the day or night, what damage was done, and all the circumstances with such accident or collision.

Ans. I have had no accident or collision there, except the one I stated in my examination-in-chief. It was, to the best of my recollec-
455 tion, at between 10 and 11 o'clock in the day.

X-int. 4. State whether or not, in passing through said bridge, it is necessary to exercise caution; and, if so, what action is necessary under different circumstances, and what different circumstances may exist at different times? State fully every act of caution necessary to be taken, under any circumstances, to insure a safe passage through said bridge from the time of leaving Meredosia landing, taking said Meredosia landing as a starting-point.

Ans. In my judgment it is necessary for a person to exercise all the caution they possibly can use. Coming down there in calm and pleasant weather, a man can come through there by working slow and being careful. When it is stormy, particularly when the wind is blowing from the west, then it is necessary to come through as fast as they can, especially in high water.

X-int. 5. State whether or not, to your knowledge, there is any written or printed rule, relating to the navigation of the Illinois River, which binds parties in their contracts for towage, or exempts
456 those entering into towage contracts from liability for loss by collision or mismanagement on the part of those contracting to tow.

Ans. Some of the tow-boats have a written or printed notice put up in the cabin or office, declaring that all towing done by the boat is done at the risk of the owner either of the canal-boat or barge. It is not sufficiently followed, however, to be called a custom or usage; for I know many tow-boats which have no such notice. I do not recollect of any tow-boats which I have run to have any such notice put up.

(Signed) THOMAS HUNTER.

Deposition of George V. Stackpole, in behalf of claimants, taken before Henry S. Lasar, special commissioner at Naples, Illinois, on the 14th day of December, A. D. 1867.

*Deposition of George Stackpole.*

Int. 1. What is your age, place of residence, and occupation?

457 Ans. I am 53 years old; I reside in Pike County, Illinois; have been steamboating as master and some time as pilot until last summer. I now am a farmer.

Int. 2. Have you any knowledge of Capt. Cha's S. Ebaugh, and of his capacity and competency as a navigator and pilot? and, if so, state what is his character and conduct with reference to skill and prudence.

Answer. I have known Capt. Ebaugh for the last 15 years past; Capt. Ebaugh is a careful, prudent navigator—one who is so skillful that I do not know of any pilot navigating the Illinois River that can beat him. I have, in passing up and down the river when I was in command of a boat, frequently met him on sand-bars, sometimes going the same way he was. I do not consider that any man can beat him.

Int. 3. Do you know what is Capt. Charles S. Ebaugh's acquaintance with the navigation of the Illinois River, and what opportunities he has had of acquiring a knowledge of the Illinois River? and, if so, state them.

Ans. Yes; I know he has been, some 10 or 12 years since he has been on the river, captain always and pilot.

458 Int. 4. Do you know anything personally of the circumstances of the loss of the canal-boat Ajax while in tow by the Admiral Farragut about the 8th of March, 1866, near the railroad bridge at Meredosia, Illinois? and, if so, state them.

Answer. I know nothing about it at all.

Int. 5. Have you or not any knowledge of the navigation of the Illinois River; and what opportunity, if any, have you had of acquiring such knowledge?

Ans. Well, I have navigated the Illinois River off and on for 30 years, in the capacity of deck-hand, mate, and master. I have also been a licensed pilot for 8 or 10 years.

Int. 6. Are you or not acquainted with the situation of the bridge at Meredosia, and the course of the Illinois River at that point? and, if so, state in what direction the river runs up to the point where the bridge is located, and in what direction does it run as the river leaves the bridge? Are there or not any currents affecting the passage-way left for boats through said bridge; and, if there are such currents, how do they effect such passage-way, and what, if any, is the effect of

459 high and low water on said currents?

Ans. I wish to add to my last answer that I have been commander of a boat on the Illinois River for the last 15 years. I am acquainted with the situation of the bridge at Meredosia and the course of the Illinois River at that point. The river runs northwardly and southwardly up to the point where the bridge is located, and the river takes about the same direction leaving the bridge. There are currents which affect the passage-way left for boats through said bridge. If a man undertakes to drop a boat through there, the current, as often as any other way, will carry him right against the draw-pier. I have worked there from 3 o'clock in the morning until after sunrise, dropping a boat and two barges through with an anchor, and then came very near losing boat and barges. The current would take me first one way and

then another, so that it was almost impossible to enter the passage-way. I used to think that it was the safest way to get a boat through, but came to the conclusion it was better to run through with a head of steam, either slow or fast, as the wind, weather, or currents might be at that time;
460 also the currents being conditioned by the stage of water. In high water the current is much worse, much harder to come through than at low water. The draw-pier should have been placed with the current instead of having been placed as in an angle to the current, as it now in the case.

Int. 7. State, if within your knowledge, what is the width of the passage-way left for boats through said bridge. Describe said bridge, and state whether or not there are any piles extending out from said bridge; and, if so, how are they placed?

Ans. The passage-way is not over 90 feet wide; it is a wooden bridge with large stone piers and one draw-pier. The draw-pier is round; there are a few piles drove up above the pier, but not sufficient to ward off anything.

Int. 8. Have you or not personally known of any case where there has been an injury to a steamer, or her tow, in passing through the bridge at Meredosia? and, if so, state the circumstances and what the causes of the injury.

Answer. I have not personal knowledge of any material injury done to any vessel; I have frequently hit the pier and incurred thereby
461 slight damages; most always, in running through make hair-breadth escapes, either hitting on the one or the other side, with skillful pilots.

Int. 9. State what, in your judgment, are the hazards and perils of passing through the bridge at Meredosia to steamers and their tows; and how, especially, collisions with the bridge or piling occur, if they do so occur, even with careful and skillful navigators?

Answer. I consider it always hazardous to pass through the bridge at any stage of the water, more especially so in high water. In entering the bridge they have to make calculations on the current, and frequently strike the pier; sometimes strike it lightly 20 times, and never do any serious damage, merely grazing along, no matter how skillful and careful the navigator may be.

Int. 10. State whether or not, previous to the opening of navigation in the spring of 1866, there had been any additions of timbers and braces to the piling, extending out from said bridge; and, if so, what additions had been made, and what was the effect of said additions, if any, to increase or diminish the hazard to boats and their tows passing through said bridge?

462 Ans. I do not recollect anything about bracing, or any additional piling. I never noticed the piling much, as I never considered them to amount to anything. I know that there are braces there, or rather pieces spiked on to stiffen the piling, but I consider them to do more harm than good.

Int. 11. Are you or not acquainted with the usages and customs prevailing on the Illinois River; and, if so, can you state whether there is any custom or usage as to general contracts for towing canal or other boats? Do such general contracts, by custom or usage, in the absence of special agreements, or do they not, except the ordinary damages and hazards of river navigation?

Ans. I am acquainted with the customs prevailing on the Illinois River. The custom is, when we take a boat in tow, whether canal-boat or barge, we take it altogether at the risk of the owner of the boat or

barge, excepting negligence and carelessness on the part of the steamer, when we expect to pay the damages. Such is the prevailing custom or usage, and I do not know of any special agreements ever made. The steamers are also, according to the usage prevailing, exempt from the ordinary damages and hazards of river navigation.

463 Int. 12. Assuming the steamer Admiral Farragut, with the canal-boat Ajax in tow, on the larboard side, was passing through the bridge at Meredosia, at about 4 o'clock a. m., on the 8th day of March, A. D. 1866; that the water in the Illinois River was at a height when the diagonal current across the passage-way was strongest; that a careful, sober, and skillful pilot was at the wheel on the passage through the bridge; that the steamer was carefully managed, but, by the strength of the diagonal current, was forced against the piles extending out for the protection of the east pier; and that the canal-boat Ajax came into contact with the piles and was stove and sunk; would or would not such a result be within the ordinary dangers and hazards of river navigation?

Ans. It would be within the ordinary dangers and hazards of river navigation.

Int. 13. State any other matter or thing within your knowledge that may be of advantage to the defendants.

Ans. I don't think of anything more than I have stated.

464 *Cross-interrogatories.*

X-int. 1. If you say you are acquainted with the navigation of the Illinois River at the Meredosia bridge, state how long you have been so acquainted; also state in what capacity, if any, you have navigated said river, whether as captain or pilot, and if either, whether you are and were, at the time when you first commenced and during the time you were engaged in such navigation, regularly licensed for that purpose. State how many times you have passed through said Meredosia bridge during the time you have been engaged in navigating said river.

Ans. For an answer to the greater part of this cross-interrogatory I refer you to my answer to interrogatory 5th, adding thereunto that I have passed through the bridge at Meredosia some 500 times.

X-int. 2. State the name or names of such vessels or steamers upon which you have ever acted as either captain or pilot on said Illinois River, and state also the business in which such vessels or steamers were engaged, whether as tow-boats or freight-boats.

465 Ans. I have commanded the "Young America" a couple of years; the "Brunette" a part of a year; the "Tropic" 2 or 3 years —I don't recollect exactly; the "Medora" part of one season; the "Vienna" two seasons; the "Adriatic" 3 or 4 years; the "F. X. Aubrey" part of two seasons; the "Lacon" 2 or 3 years; the "Beardstown" two years and a part of a year. I have made frequent trips on other boats, commanding them; as, the "City of Pekin," the "Sam. Gaty." The boats I mostly commanded were passenger and freight boats. I have also commanded the "Melbourne" part of one season, as freight or tow boat; I have never filled the position of pilot, except as making occasional trips on my own boats; that is, on the boats I commanded.

X-int. 3. State whether or no, during the time you have been so engaged in the navigation of said river, you have ever met with any accident or collision while passing through the Meredosia bridge; and, if so, state when, at what hour of the day or night; state the nature of such

accident or collision, what damage was done, and all the circumstances with such accident or collision.

Ans. For my answer to this cross-interrogatory I refer to my answer to interrogatory 8th.

466 X-int. 4. State whether or not, in passing through said bridge, it is necessary to exercise caution; and, if so, what action is necessary under different circumstances, and what different circumstances may exist at different times. State fully every act of caution necessary to be taken, under any circumstances, to insure a safe passage through said bridge, from the time of leaving Meredosia landing, taking said Meredosia landing as a starting-point.

Ans. Of course it is absolutely necessary to exercise caution. All a man can do is for a pilot to do the best he can under the circumstances, exercise his own judgment. He must be guided some by the way the wind is blowing, and they way the current sets, either in high or low water. It is sometimes necessary to go through with all the steam you can raise, or rather with all the steam you would be allowed to carry. At other times it might be prudent to go through not so fast, but slow. Sometimes it might be necessary to stop the engines and back the boat. All this would be optional with the pilot. He would have to be his own judge of this.

X-int. 5. State whether or not, to your knowledge, there is any written or printed rule relating to the navigation of the Illinois River,
467 which binds parties in their contracts for towage, or exempts those entering into towage contracts from liability for loss by collision or mismanagement on the part of those contracting to tow.

Ans. There is no written or printed rule that I have ever been acquainted with, relating to the navigation of the Illinois River, in regard to contracts for towage.

(Signed) GEO. V. STACKPOLE.

The oral testimony of Charles S. Ebaugh, in behalf of the claimants, taken in open court upon the hearing of said cause, is in the words and figures following, to wit:

I am somewhat acquainted with C. J. Morton; he was on my boat about a month after the accident; he reported himself as agent for the insurance company; I had some conversation with him in relation to this accident; did not state to him that I ought to be kicked for letting the accident occur; I did not state that this was the only time
468 I attempted to do differently.

Question. Did you state to him that it was too bad you had done such a thing, because it tarnished your reputation as a pilot?

Ans. I did not.

Question. Did you state that you had been for years steamboating, passing that bridge day and night, and now your first accident resulted from your own carelessness?

Ans. I did not make any such statement.

Question. Did you ever, in any conversation with Mr. Morton, admit or intimate that this accident was the result of your own carelessness?

Answer. I did not.

Question. Did you have a conversation with Mr. Clark, in which you said to him, "By God, I am a steamboat-man, and it is the first time I have ever done any damage in the bridge; I have criticized every God-damned man that ever did any damage in this bridge. By God, there is no use in any accident happening; it is not necessary; I don't care a

damn for the canal-boat; I ought to pay for it, and pay for the whole thing."

469 Answer. Nothing at all like it.

Question. Did you make this statement: "Henry (your son) had the wheel just before the collision, and I saw the boy had not the Farragut in the right place, and took the wheel; and, by God, I had not bettered it any?"

Answer. Not at all, because it was not so.

Question. State to the court what would be the utmost speed the Farragut could make, loaded as she was with the canal-boat.

Answer. Running straight with the current, not over six miles an hour, but running as she was less than that; probably not over five.

(Witness here described the course of the Farragut at the time of the accident, and the effect of the current as shown in the plat marked "B B," annexed to his deposition taken before Henry Phillips, special commissioner.)

*Cross-examination.*

Question. What did you say to Mr. Morton on this occasion?

Answer. I stated to him just what I stated to the court here,

470 but I had no diagram. I proceeded in describing the manœuvring of the steamboat, to show him how I wished to go through the bridge before.

Question. State, as nearly as you can recollect, what the conversation was.

Answer. I recollect one subject exclusively that was spoken of on the whole trip; that was in reference to some risks they had had on Red River; I had been on Red River that same season. After explaining the cause of the accident, we then talked about towing canal-boats. I remarked to Mr. Morton that I censured myself very much for taking the canal-boat in tow. It was something I had not done for six or seven years, to tow canal-boats, from the fact of canal-boatmen being a very quarrelsome, dishonest set of men to do business with, as a general thing. That is as near the conversation as I can recollect.

Question. Do you know what was Mr. Morton's object in visiting Beardstown at that time?

Answer. I think it was to make some arrangement with these men about the loss of the Ajax.

Question. Had you any conversation with Mr. Morton about this accident previous to this?

471 Answer. We conversed some little at Beardstown on the morning previous to his going down.

Question. What was said at that time?

Answer. I do not recollect.

Question. Where did this conversation at Beardstown take place, and who was present?

Answer. I could not tell you.

Question. Did you know at this time that Mr. Morton was the agent of the insurance company?

Answer. Yes.

Filed Feb'y 4th, 1868.

GEO. P. BOWEN, *Clerk.*

472 [5 internal revenue.]

UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

I, George P. Bowen, clerk of the district court of the United States for said southern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in said court in a certain cause lately pending therein, wherein Charles Clark and the Buckeye Mutual Insurance Company are libellants, the steamer Admiral Farragut is defendant, and Charles S. Ebaugh, John F. Nolte, Samuel Marsh, and Charles H. Quinlin are claimants and respondents, as the same are now on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this tenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

[L. S.] GEO. P. BOWEN, *Clerk.*

(Indorsed:) Filed June 13th, 1868.

J. A. JONES, *Clerk.*

473 Now, afterwards, to wit, at a term of said court, begun and held at the city of Springfield, in said district, on the first Monday of June, in the year of our Lord one thousand eight hundred and sixty-eight, and on the seventeenth day of said June, the following proceedings were had in said cause, to wit:

CHARLES CLARK ET ALS., APPELLANTS, *v.* THE STEAMER ADMIRAL FARRAGUT. } Admiralty.—Appeal from district court.

Now come the parties, by their attorneys, and the court, having heard the appeal herein and the arguments of counsel, & not being sufficiently advised in the premises, takes times to consider.

Afterwards, to wit, at a term of said court, begun and held at said Springfield, on the first Monday of January, A. D. 1869, and on the 1st day of said term, being the 4th day of said January, the following proceedings were had in said cause, to wit:

CHARLES CLARK AND THE BUCKEYE INSURance Company, appellants, *v.* THE STEAMER ADMIRAL FARRAGUT, Respondent. } Appeal from district court.—In admiralty.

474 Now come again the parties, by their proctors, and the court being now sufficiently advised in the premises, it is ordered and decreed that the decree of the district court, entered in this cause, be in all things affirmed. It is further ordered and decreed that appellant pay the costs of this appeal, taxed at forty-three and $\frac{84}{100}$ dollars, and that execution issue for the collection of the same against appellant and George M. Brinkerhoff. It is further ordered and decreed that a copy of this decree be certified to the district court.

Now afterwards, to wit, on the nineteenth day of March, of the year last aforesaid, the said appellants filed their bond of appeal in the office of the said circuit court in the words and figures following, to wit:

Know all men by these presents that we, Charles Clark and the Buck.

eye Insurance Company, principals, and Joseph F. Armour and Arthur C. Ducat, sureties, are held and firmly bound unto the steamer
475 Admiral Farragut and her owners, in the sum of five hundred dollars, lawful money of the United States, to be paid to the said steamer Admiral Farragut, or her owners, or their executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents, dated this 19th day of February, A. D. 1869.

Whereas the above-bounden Charles Clark and the Buckeye Insurance Company have appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the southern district of Illinois, bearing date the 4th day of January, A. D. 1869, in a case in which the said Charles Clark and the Buckeye Insurance Company were libellants, and the steamer Admiral Farragut was respondent:

Now, therefore, the condition of this obligation is such, that if the above-bounden appellants, Charles Clark and the Buckeye Insurance Company, shall prosecute their appeal with effect, and pay all such costs and expenses as shall be awarded against them as such appel-
476 lants therein, then this obligation to be void; otherwise to remain in full force and effect.

CHARLES CLARK, [SEAL.]
P'r L. PROUDFOOT, *Proctor.* [SEAL.]
L. D. HUDSON, [SEAL.]
*Sec'y Buckeye Ins. Co.* [SEAL.]
JOSEPH F. ARMOUR. [SEAL.]
ARTHUR C. DUCAT. [SEAL.]

Approved:

S. H. TREAT, *Dist. Judge.*

(Indorsed:) Filed March 19, 1869.

J. A. JONES, *Clk.*

Now heretofore, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, a citation was issued to the respondents in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

To the steamer Admiral Farragut, greeting:

You are hereby cited and admonished to be and appear at a
477 Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein Charles Clark and the Buckeye Mutual Insurance Company are appellants, and you are the defendant in error, to show cause, if any there be, why the decree in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this fourth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-third.

S. H. TREAT,
*District Judge.*

Which said writ was afterwards returned, indorsed as follows, to wit:

Service of this citation is accepted this twenty-fourth day of May, A. D. 1869.

H. E. DUMMER,
*Att'y for the Steamer Admiral Farragut.*

(Indorsed:) Filed May 24th, A. D. 1869.

J. A. JONES, *Clk.*

478 UNITED STATES OF AMERICA,
*Southern District of Illinois, ss:*

I, John A. Jones, clerk of the circuit court of the United States for said southern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in said court, in a certain cause lately pending therein, wherein Charles Clark and the Buckeye Mutual Insurance Company are libellants, the steamer Admiral Farragut is defendant, and Charles S. Ebaugh, John F. Nolte, Samuel Marsh, and Charles H. Quinlin are claimants and respondents, lately appealed from the district court of the United States for the southern district of Illinois, as fully, truly, and completely as the same are now on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-third.

[SEAL.] JOHN A. JONES, *Clk.*

[Five-cent internal revenue stamp affixed and canceled.]

Cost of transcript, &c., $107 45.

(Indorsement on cover:) No. 257. Charles Clark and the Buckeye Mutual Insurance Company, appellants, vs. the steamer Admiral Farragut. S. Illinois C. C. U. S.
Filed 27th September, 1869.

PIGOTT, WEBSTER & Co., Printers,
86 and 88 Dearborn St., Chicago.

# SUPREME COURT OF THE UNITED STATES.

CHARLES CLARK AND
THE BUCKEYE MUTUAL INS. CO.
APPELLANTS.

*vs.*

THE STEAMER ADMIRAL
FARRAGUT,
APPELLEE.

*Appeal from*
*U. S. Circuit Court,*
*Southern District*
*of Illinois.*

# APPELLANTS' POINTS AND BRIEF.

## STATEMENT OF CASE.

On the 7th day of March, 1866, the canal boat Ajax, owned by the Appellant, Charles Clark, was lying at the Port of Beardstown, on the Illinois river, laden with a cargo of wheat, corn, and oats. She had been so loaded late in the fall of 1865, but was unable at that time to get a steamer to tow her to St. Louis, the port of destination. On said 7th day of March, said Clark entered into a contract with the master, who was part owner of the steamer Admiral Farragut, a freight and passenger boat, to tow his said canal boat with her cargo, safely from said Port of Beardstown to the Port of St. Louis, State of Missouri, and return, for the sum of one hundred and thirty dollars. The canal boat was lashed to the side of the Admiral Farragut, which was a powerful steamer and proceeded down the river to a place known as Meredosia Landing, where they arrived at about two o'clock on the morning of the 8th March. The Farragut then took on some freight and about three o'clock they resumed their voyage. About one quarter of a mile below the said landing, the said Illinois river is spanned by what is known as the Meredosia Rail Road Bridge; at this point in the early spring, a strong cross or diagonal current exists in said river, making it

very difficult for boats to pass through the draw of said bridge; and to insure safe navigation of the river at this point, great diligence and skill is necessary; the evidence shows, however, that by the exercise of such skill, and by following a course which is well known to all the river men, that is, to "hug" the west bank of the river, they can invariably pass safely; and though the bridge had been built for some seven years, only from seven to ten serious accidents had occured there, most of which the evidence shows, were attributable to carelessness. Notwithstanding the well known danger of this locality, there was no special "Look Out" on said steamer, all hands had been ordered to turn in; the Captain was in the wheel-house at the wheel, which was up on the hurrican roof some 22 feet above the main deck and 55 or 60 feet back from the stem. Instead of taking the course usually taken by steamers to pass through the draw of the bridge, on this occasion the Admiral Farragut, with full steam on, ran straight from the landing for the draw and caused the canal boat to collide violently with the piling under the bridge, thereby causing her to sink, and she and her cargo became a total loss. The value of said canal boat is claimed, and proved to be $3,000; thefreight list for said cargo amounted to $250. Captain Clark, the owner of the Ajax, was on board with his wife and all of their earthly possessions, household goods, clothing, and effects, to the value of $500, all of which were lost, making a total loss of $3,750.

The collision was so violent that a passenger was thrown overboard and drowned, and Clark and his wife narrowly escaped with their lives.

The Appellant, Clark, filed his libel against the said Steamer Admiral Farragut, in the District Court of the United States for the Southern District of Illinois, on the 26th day of April, 1866, in which libel he avers the seaworthiness of the Ajax, and that the collision occurred, not from any want of skill, or by the negligence of himself or of any one in charge of the canal boat, but that it occurred wholly from the negligence, recklessness, and incapacity of those having the charge of the steamer Admiral Farragut.

On the 16th of July, 1866, the Appellant, the Buckeye Mutual Insurance Company, having, under a policy of insurance, issued by it upon the said canal boat Ajax, paid the sum of fifteen hundred dollars, filed its petition in said case, praying that it might be made a party libellant in said suit, and be declared subrogated to the right and interest of said Clark, to the extent of said $1,500, which prayer was granted, and by order of said Court, said Company was made a party libellant therein with said Clark.

Subsequently the Home Insurance Co., of N. Y. filed a libel against said steamer, to recover for the loss of the cargo upon which it had

issued its policy for the sum of $6,250, which suit is now pending in said District Court, and abides the result of this appeal.

The Respondent's answer to said libel, filed July 2nd, 1866, denies that the Ajax was tight, staunch and seaworthy, and claims that she was unseaworthy and worthless; admits the collision with the bridge and her loss, but denies that the steamer was carelessly and negligently managed, or that the loss was attributable to the incompetency, negligence or fault of those having her in charge, but that the loss is entirely attributable to the usual dangers of river navigation; it then avers that this cross or diagonal current exists, which on this occasion carried them against the piles under the bridge, causing the Ajax to be crushed between such piling and the steamer. Answer admits that there was no carelessness or negligence on the part of those in charge of the Ajax; that the libellant Clark and his wife were in danger of being drowned, but denies that the Ajax was worth three thousand dollars, or that Clark and his wife lost five hundred dollars worth of furniture, clothing, bedding, &c.

The case came up for a hearing in the said District Court, on the 4th of February, 1868, and was taken under advisement. On the 4th of May, following, the Court rendered a decree dismissing said libel, and finding that the steamer Admiral Farragut was not in fault.

An appeal from this decree was taken by the libellants to the Circuit Court of said District, and a hearing in the same was had on the 17th day of June, 1868, and the case was taken under advisement and the decree of the District Court was subsequently affirmed with costs of appeal, from which said decree of said Circuit Court, the libellants appeal to this Honorable Court.

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That there was no special "Look Out" on the occasion of this collision is admitted by the Appellee's own witnesses, and we claim that the evidence shows in addition that there was the greatest negligence and recklessness shown on the part of the officers of the steamer Admiral Farragut.

We are aware that this Court has frequently decided that where the facts in a case have been passed upon with the same result by both the District and Circuit Courts, they will not be inquired into here; yet we would respectfully submit that where a legal principle is involved, important as is this question of "Special Look Outs" to the commercial world, the evidence must be strong indeed, to cause this Court, for the *first* time, to qualify the law as it is laid down in every decision

of this Honorable Court in that regard, the results of such a decision would be too important, and are fraught with interest to the maritime world.

*The Hypodame, 6th Wallace 223.*

The testimony in this case was all taken by deposition, no witnesses

In *all* of the reported cases, *without exception*, where it has been shown that there was no "Look Out," the decrees have been against the parties so violating the law; this court holding in all such cases, that no evidence adduced, was sufficient to shield such parties from the penalty for such violation. And in *all* of the cases where this court has objected to a review of the evidence as to facts, both of the courts below having passed upon them, there has been to start out with, either a *prima-facie* case of fault for some violation of the laws regulating navigation, made out against the party asking for such review, or such review was denied upon some disputed question of fact, arising out of an alleged violation of some principal of law, by which it was expected to prove such violation. In the case at bar, the violation of the law relating to "Look Outs" is not denied by the Appellee, but on the contrary, it is admitted by the Appellee that she had no "Look Out" on this occasion.

*Male Niemann, from our Rec., Record, page 30.*

Captain Ebaugh was in the wheel-house and acted in the capacity of Captain of the Watch, Wheelsman and "Look Out."

The law says: "There must be a man specially detailed to have a trustworthy and constant "Look Out" *stationed at the part of the vessel best adapted for that purpose*, and whose *whole* business is to keep such look out. An omission in case of collision would be *prima-facie* evidence of fault. The wheel-house is not a proper place for such "Look Out," neither is the hurricane deck, and the Captain of the Watch is not such a "Look Out" as is required by law."

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| New York, et al. *vs.* Rae, | 18 *Howard*, 225. |
| St. John *vs.* Paine, | 10 *Howard*, 585. |
| Chamberlain, et al., *vs.* Ward, | 21 *Howard*, 570. |
| James Gray *vs.* John Frazer, | 21 *Howard*, 191. |
| Genesee Chief, | 12 *Howard*, 462. |
| Haney, *vs.* Balt. Packet Co., | 23 *Howard*, 192. |
| New York & Balt. Trans. Co., *vs.* Phil. & Sav'nah St'm Nav. Co., | 22 *Howard*, 471. |
| The Ottawa, | 3 Wallace, 278. |

This requirement extends to all classes of Steamers and Vessels;

of this Honorable Court, in that regard, the results of such a decision would be too important, and are fraught with interest to the maritime world. The Hippodame, 6 Wallace 223.

The testimony in this case was all taken by deposition, no witnesses appearing in either Court, except Captain Ebaugh, the man who was at the wheel at the time of the collision, and who owned an one-half interest in the Steamer; although his deposition had been previously taken, he was put on the witness stand at the time of trial to rebut the statements made by Mr. Morton, Record, page 158; and we would respectfully ask the attention of the Court to the evidence, for we claim that it shows fully that *the neglect to have a proper "Look Out," was the cause of the collision and loss.*

The Canal Boat was lashed to the side of the Farragut and had no control whatever of its own movements, but was completely under the control of the Steamer.

There was no "Look Out" on the Steamer.

*Capt. Ebaugh, Cross Int. 13, Record, page 64.*
*Mate Niemann, from 8th line, Record, page 55.*

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the following cases are strongly in point, being those of Steamers engaged in towing.

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| Sturgis *vs.* Boyer, | 24 *Howard*, 118, 120. |
| Goslee et al. *vs.* Shute's Execu'rs, | 18 *Howard*, 467. |
| Culbertson *vs.* Shaw, et al. | 18 *Howard*, 587. |
| New York, et al. *vs.* Rae, | 18 *Howard*, 225. |
| New York & Balt. Trans. Co., *vs.* Phil. & Sav'ah St'm Nav. Co., | 22 *Howard*, 461. |
| ~~Genesee Chief~~, Fitz et al vs Bull et al | 12 *Howard*, 471. |
| Pearce, et al. *vs.* Page, et al. | 24 *Howard*, 228. |
| Steamer New Philadelphia, | 1 *Black*, 62, 74. |
| Wells *vs.* Steam Navigation Co., | 4 *Seldon*, 375. |
| Ashmore *vs.* Penn. Trans. Co., | 4 *Dutcher*, 180. |
| Alexander *vs.* Green, | 7 *Hill*, 533. |

The necessity for a "Look Out," in this case, was doubly great; as the Admiral Farragut was a passenger boat, and at this time had some eight or ten passengers aboard. (*See Ebaugh Testy. Record, p. 65, Int. 3.*)

It is claimed by the Appellee that in order to recover, it must be shown by the Appellant (though the Steamer violated the law in regard to a "Look Out,") that the want of the "Look Out" was the cause of the collision.

In vain do we look in *all* of the above quoted decisions for any such qualification of the law.

We would submit that no such qualification can be found. We claim the law to be under all of the decisions, that the neglect to have a "Look Out" is the grossest negligence; and that we having made a *prima-facie* case against the Appellee, it devolves on it to show by *largely preponderating evidence*, that the neglect to have a "Look Out" did not in the *slightest* degree tend to the collision and loss. The Appellee has not only *not* shown this, but we claim that we have established beyond any doubt, that the collision and loss were directly attributable to such neglect, and to the fact that the wheelsman, who also acted as "Look Out," was shut up in the wheel-house up on the hurricane roof, some 22 feet above the main deck, and 60 feet back from the stem of the Steamer.

Captain Ebaugh, the wheelsman, testifies that he did not know that the collision was imminent, until just the moment that they struck.

*Record, page 59, 10th line from top.*
*Record, page 62, 17th line from bottom.*

Captain Clark, who was down on the canal boat, says, that he saw she was going to strike, and ran forward to the deck of the Farragut, got a fender and ran back to the side of the Canal Boat, but was too late, &c.

*Record, page 33, 4th line from top.*
*Record, page 71, Int. 6 and 7.*

This statement of Clark is corroborated by the witness Cain, a laborer on the Steamer.

*Record, page 29, Int. 3.*

The bridge-tenders all say that they knew that a collision was inevitable, some time before she struck.

*Dunn Testy. Record, page* 17, *Int.* 26.
*King Testy. Record, page* 25 *Int.* 7.
*Smith Testy. Record, page* 26 *Int.* 1.

We would submit that had a "Special Look Out" been properly placed low down on a line with surrounding objects, in a position *as the law directs*, where he could communicate with the man at the wheel, he could have notified the wheelsman of the danger of the collision, when she was three or four hundred feet from the bridge, and thereby have prevented this loss.

Another very strong point in the evidence which shows that the neglect to have a "Look Out," was the cause of the loss.

Captain Ebaugh, from his elevated position, and shut up in the wheelhouse, entirely mistook the position of the boats at the time they struck; he testifies that they were in position No. 6 as marked on diagram B. B. (*See Record, page* 58, *4th line from bottom*), he is the sole witness who testifies to this position at the time of the collision, but all the other witnesses being on a line with the bridge, in positions where they could clearly see how she struck, testify that they struck at the end of the piling, as shown on diagram C C on Record page 18; among these are Niemann and Nolte, two of Appellee's own witnesses.

*See Nolte's Dep. Record, page* 85, *Cross Int.* 11.
*Neimann's Dep. Record, page* 53. 8th Line from bottom
*Dunn's Dep. Record, page* 17, *Int.* 29, 32 and 33.
*King's Dep. Record, page* 24, *Int.* 2.
*Smith's Dep. Record, page* 27, *Int.* 8.

The results of the collision on the bridge too, show that she struck

at the point designated by these witnesses, for it sprung the rests so that they could not turn the bridge, and they were obliged to use a sledge hammer, break the castings and knock the wheel on which the bridge rolled, out of its place before the bridge would swing.

*Dunn's Test'y Rec., p. p.* 17 *and* 23, *Int.* 30, 31, 43.
*Smith's Test'y Record, page* 26, *Int.* 1.

We would respectfully submit that this case establishes fully the dictum in the cases above cited, that the wheel-house and the hurricane roof are not proper places for a "Look Out," because it is impossible to discern correctly surrounding objects, as can be done if standing down on a line with them; and, we claim that this fact is conclusive of the necessity of a "Look Out" on this occasion; and that with one, this collision and loss would have been avoided.

As we have before said, the navigation of the Illinois River, at this point, is difficult and dangerous in the early spring when the water is high, and this fact was well known to the officers of the steamer, and they rely upon *this* fact to exculpate themselves.

It has been frequently held that in places where the navigation is difficult, and danger is to be apprehended, extra vigilance must be exercised, and that none of the rules regulating navigation shall be dispensed with; yet, in the face of the danger, all the crew was sent to bed by the Mate; none of them up to keep watch and be on hand *to avert this danger*, no one on the "Look Out," surely, if ever there was a place or time when this extra vigilance was called for, this case presented such place and time.

The Johnson, 9th Wallace 146

In the case of Goslee *vs.* Shute's Executors, et al., 18th *Howard*, *page* 467, the Court says: "*An efficient watch is indispensable in navigating our western rivers, and the fact that there was* **no** *watch to direct or advise the Pilot, he being left to the exercise of his own judgment, unaided by suggestions or facts from any quarter, is enough to charge the Autocrat with fault.*"

We have thus made a *prima-facie* case of gross negligence on the part of the steamer, supported by every decision of this Honorable Court, as well as of the English Admiralty Courts.

In order to escape from liability it must be shown by the Appellee the burden of proof being on it,) that this *gross negligence* did not tend in the ***slightest*** degree to the collision and loss.

On this point the evidence of 6 witnesses is taken by Appellee.

These witnesses are Chas. E. Ebaugh, Captain and half owner of the Farragut, Charles Henry, his son, a boy 19 years of age, Nolte, one-eighth owner, Neimann, Mate, Bolejack, engineer, and Purdam, watchman.

Captain Ebaugh starts out by swearing that there were no acts or omissions on the part of officers or crew showing neglect, carelessness or want of skill.

*Capt. Ebaugh Record, fol.* 66.

This might strike one as remarkably cool in the face of the fact that the laws regulating navigation had been violated in every particular.

He attempts to prove his statement by the five other witnesses.

Nolte testifies (*see Record, page* 82,) that he was in the hold of the steamer examining if all was right, and that he came up from 5 to 10 minutes after leaving the deck, and the steamer was then in position 4, which was about 200 feet from the bridge, and went at once on board the Ajax. Yet he says, (*see Record, page* 84, *Int.* 13,) the officers of the boat were all on duty and in their proper places.

Neimann testifies (*See Record, page* 55, *Marginal page* 161,( that he was busy about the steamer when she left the dock, that he went on the hurricane roof—it may be three, four or five minutes afterwards. He says he told Ebaugh, when she began to swing, that she was going to strike the piling, but he made no reply; it was only one or two minutes before she struck. Ebaugh was in the pilot-house; he did not see any one else in the pilot-house; the son Henry was not in the pilot-house.

Purdam states, (*see Record, page* 128, *Cross Int.* 3,) that up to the time the collision took place, he was employed in his duties in various parts of the boat, not on the roof, but on deck and in the cabin.

Boljack, the engineer, was down below in the stern of the steamer, attending to his duties as engineer; yet, he too testifies that the officers up on deck were not guilty of carelessness, neglect or want of skill.

Henry Ebaugh, the son, claims to have been in the wheel-house, but Neimann says he was not there, and Quinn, a passenger on the Farragut, says, (*see Record, page* 28, *Int.* 12 *to* 14,) that before the collision, he saw Henry leave the wheel-house and go away.

The testimony therefore shows, under the statement, "that *all* the officers were on duty and in their proper places;" that Capt. Ebaugh only was on duty, and he was at the wheel, shut up in the wheel-house.

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It is then attempted to be proved that extraordinary diligence and caution were used in approaching the bridge; and Captain Ebaugh swears that after rounding out from the dock, he stopped the engines and backed several times; and that it took him from a quarter to a half hourto reach the bridge, from the dock. He produces a diagram, B. B., with positions of Steamer after she left the dock, until the moment she struck the bridge, which he swears to, and upon which he bases his defence; his son Charles Henry sustains him; but neither of the three other witneses testify to such diagram, or sustain him in the statement as to stopping, backing or floating, except Boljack, the engineer.

Neimann says nothing of the kind, but says: "I don't think that immediately before the collision the steamer was going anything more than an ordinary rate of speed, (*see Record, page* 54, *2d line from top*,) and after stating the dangers of this point, says: "*On some occasions I have had trouble in going through, and have been obliged to back up.*" (Record, page 56.)

We would submit, that had they backed and floated, as testified to by Ebaugh, he would have so stated; he says, they were only from five to seven minutes in reaching the bridge. (Record, Marginal page, 161.)

Nolte and Purdam say nothing about backing or floating; yet Nolte testifies, (*Record, page* 82), (although he was down in the hold of the Farragut at the time that the Farragut left the dock, and did not come up until she was in position 4), that she rounded out until she got in position No. 1.

The only one of these witnesses who attempts to sustain Ebaugh in this statement is Boljack, the engineer, whose recollection of minute events happening one year before, on that particular evening, before any disaster had happened, to impress the facts on his mind as to how many times he backed and slowed the engines. when he was obliged to do so almost every time that the steamer passed down the river, we must submit, is very vivid and likely to create doubt as to its correctness. His testimony, too, shows that while passing this dangerous locality, he instead of standing at the throttle, (which is located in the middle of the boat,) ready to answer the bells the minute they were sounded; left this position some dozen of times to look out of a side door to ascertain were they were, and what was going on.

We claim that he did not take the course as laid down on the diagram, but he ran directly for the draw of the bridge without stopping, and this is testified to by Clark, Dunn, King and Smith; and Mr. Morton testifies that Capt. Ebaugh, shortly after the collision, told him that he he did so.

I would ask the attention of the Court to the testimony of these witnesses, on this point:

*Clark's Dep., Record, p. p.* 32, 33, *Int. 6th and 9th.*

The witnesses Dunn, King and Smith, were standing on the bridge (having charge of it for the Railroad Co.,) waiting for the Farragut to come through, in order to close it; they are entirely disinterested, and they testify unqualifiedly, that the Farragut did not take the course marked on the diagram, neither did she stop or float from the time she left the dock, but came nearly straight from the dock until she struck the pier; in so doing, occupying some five or six minutes, (*see Dunn's Test'y Record, page* 23, *Int.* 39,) and further, they testify that they saw she would strike, some minutes before she did so.

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| *Dunn Deposition Record, p. p.* | 16, | 17, | *Int.* | 21 | *to* | 27. |
| *King* | " | " | " | 24, 25, | " | 2, | 5. |
| *Smith* | " | " | " | 26, | " | 1, | 7. |
| *Morton* | " | " | " | 49, | " | | 5. |

Here then is the testimony of five witnesses, four of them entirely disinterested, to contradict the unsupported testimony of Ebaugh and his son, as to the course followed; the son admitting that his father had talked to him about it; (Record, page 74, Int. 11) but, his own witnesses sustain us on this point. Boljack says they ran out only to the middle of the river.

*Record, page* 79, *Int.*, 2.

We would submit that the unsupported evidence of a man who is one half owner of the steamer, should be taken with some caution, and should not be allowed any weight as against the testimony of five other witnesses, four of whom have no interest in the matter whatever.

But Captain Ebaugh, himself, finally knocks out the only prop to his case, on this point, when he admits that he is not positive as to the position No. 1, on the diagram, but is positive only as far as the wreck of the Martha. The wreck of the Martha lay only a few hundred feet from the dock. (See diagram.) Record p. 62, 9th line from top.

The Appellee has made much of the point that the steamer lying with her head up stream could not have approached the bridge on the line marked by Dunn, on the diagram, for the reason that she had to round out from the dock. We would submit that the witnesses do not pretend to say how she left the dock, they only testify as to how she appeared to approach the bridge; any argument upon the theories (as this Court has suggested in the case of the Ottawa, 3d Wallace,) is use-

less; the collision and loss occurred; how the steamer ran down on the bridge, whether she ran down on one line or another, is unimportant; she did collide, the question is, not *how* she did it, but where does the fault lie?

And here we would call the attention of the Court to the diagram B. B. Mr. Nolte who drew it says he drew the bridge, draws and positions of the boats, on a scale of 40 feet to the inch; but made no actual measurements or surveys; (Rec. page 83, Int. 8 and 9,) the rest of the drawing, that is, as to the width of the river and distances from point to point, are drawn with reference to no scale whatever; (Record, page 86 Mar. page 255,) and hence, give a very incorrect idea of locations and distances.

All the witnesses say that the location, as per diagram of the west bank or point is correct; one witness has measured and found the width of the river to be 350 yards or 1050 feet from the point to the Meridosia Dock; (*Record, page* 92, *Cross Int.* 14), this, on a scale of 40 feet to the inch, would be 26 inches; the distance from the dock to the draw of the bridge, it is fully shown, is about one-fourth of a mile, or 1320 feet; which on a scale of 40 feet to the inch would be 33 inches.

In making these measurements, the Court will see that the dock would be just about in the position as marked by Dunn; and from such position the steamer may very easily have approached the bridge on the line as marked and testified to by Dunn, King and Smith.

There will be no question in the minds of the Court that the boats struck on the end of the pier, as per diagram C. C., on Record, page 18; for *all* of the witnesses so testify, except Ebaugh (who was shut up in the wheel-house,) and his son; the son upon being interrogated, (see Record, page 75, Cross Int. 22) admits that had they pursued the course as testified to by Dunn, they could have struck the piling, as we claim and prove they did.

The position taken therefore, that great caution and diligence were exercised in approaching the bridge, as shown by diagram B. B., is based on the unsupported statement of Ebaugh and his son, while four witnesses deny unqualifiedly the correctness of the diagram or the statements of Captain Ebaugh in reference to it; and one witness (Mr. Morton) testifies that Ebaugh made a statement shortly after the collision as to how it occurred; which agrees in every respect with the statements of the four other witnesses; finally Ebaugh himself admits that he is uncertain of its correctness; this, then is the preponderance of testimony claimed by the Appellee, to overcome the *prima-facie* case of gross negligence and fault made by Appellants.

The Appellee in its argument will doubtless take the same ground that it did in the Court below and make a *general averment* that the evidence of the witnesses sustains the diagram B. B., and the position taken by its officers of great care and diligence; but we would respectfully submit that they cannot quote from a single witness, except Cap. Ebaugh or his son, to sustain such argument, while we have taken the testimony of their own, as well as our witnesses, and digested it truthfully and carefully, as by a reference thereto will be clearly shown.

Having violated all of the well established laws relating to navigation, as laid down in the decisions of this Court, the Appellee attempts to escape liability by hiding behind the plea of "Inevitable Accident," or "Perils of River Navigation."

Story on Bailment, Section 25, says: "Inevitable Accident, commonly called the act of God, is meant any accident produced by any physical cause which is irresistable; such as a loss by lightning or storms, by the perils of the seas, by an inundation or earthquake, or by sudden death or illness."

Redfield on Railways, chap. 16, page 232, says: "The term is imited to accidents which come from a force superior to all human agency, either in thier production or resistance."

*See also Abbott on Shipping, p. p.* 472 & 486.

In the case of the Virgil, 2d Wm. Robinson, page 205, the comments of the Court on the term "Inevitable Accident" apply to this case, it says: Inevitable accident implies in point of law, that which the party charged with the offence could not possibly have prevented by the exercise of ordinary care, caution and skill." And the Court further says it will be no valid excuse for the master to aver, that he could not prevent the accident at the moment it occurred, *if he could have used measures of precaution, that would have rendered the accident less probable.*

For the definition of the term "Perils of the Seas," (see Story on Bailments, Sec. 512,) he says: "The phrase includes such losses only, as are of an extraordinary nature, or arise from some irresistable force, or from inevitable accident, or from some overwhelming power, which cannot be guarded against by the ordinary exertions of human skill and prudence. Hence it is, that if the loss occurs by a peril of the sea, which might have been avoided by any reasonable skill or diligence, at the time when it occurred, it is not deemed to be in the sense of the phrase, such a loss by the perils of the seas as will exempt the carrier from liability, but rather a loss by the gross negligence of the party." (See also Sections 492, 516, 528.)

In this case they start out with the grossest negligence—the failure to have a "Look Out."

"It is a loss happening in spite of all human effort and sagacity." (3d Kent Com. 217.)

In this connection we would refer to the decisions in the following cases:

Steamer, New Philadelphia, 1st *Black*, 66.
Genesee Chief, 12 *Howard*, 466.
Union Steam Ship Co. *vs* N. Y. & Virginia Steam Ship Co., 24 *Howard*, 307.
The Louisiana, 3 *Wallace*, 174.
The Morning Light, 2d *Wallace*, 560 and notes.
Oakley *vs*. the Port of Portsmouth, 34th Eng. Com. Law and Eq. 530.
Ill. River Pack't Co, *vs*. Peoria Bridge, 38 Ill., 476.
Kelsey *vs*. Barney, 2 Kernan, 426.
1st Conk. Admiralty, 163 to 173.

The terms "Inevitable Accident" and "Perils of Navigation," by all the authorities, are synonymous.

The question arises, was this such an accident as could not have been avoided by the exercise of ordinary care, caution and skill?

In the case of "The Hope," (2d Wm. Robinson, p. 9,) the Court says: "If a vessel chooses to avail herself of a particular mode of going down the river at a particular time, which renders it difficult to escape from collision, if a collision does take place she must bear the consequences of a contingency to which she has exposed herself."

Captain Ebaugh cannot sustain his profession of ignorance of the rapidity of the current, for he came down the river only about an hour before the collision, and rounded into the dock at Meredosia; he could have waited until daylight, and it was his duty so to do, unless he chose to take the risk, which he did, and therefore must suffer the consequences. (Hope, 2d Wm. Robison, 9, Peoria Bridge, 38, Illinois, 476.) That the night was not dark, and that surrounding objects were discernable, is not denied by Captain Ebaugh, and the evidence shows such to have been the fact. (Dutch, Record, Marginal page 344.) (Neimann, Record, page 54, 10 line from top.)

Ebaugh testifies that he was aware of the existence of this cross current, that it existed every spring; that he well knew how to avoid its

effects; that he had passed through the bridge, up and down the river, every spring since it was built, and that he had never sank a boat.

The testimony of nine river captains and pilots is introduced by Appellee to prove that a loss, happening at this bridge, is an "inevitable accident."

Harper says (see Record, page 124, Cross Int. 3,) that he had piloted boats through the same bridge, 5 or 6 times every season, but never sank a boat there.

Wills says (Record, page 110 Cross Int. 13) that he never sank a boat there.

Detweiler says (Record, 131, Cross Int. 3,) that he never met with any accident there when he had the wheel; he avoids answering Cross Int. 3 and 4.

Leach says (Record, page ~~130~~ 138, Cross Int. 1 to 3,) that he has navigated the river at that point every year since 1860, and that he never sank a boat or met with any accident except on one occasion he broke a staunchion.

McEvers says (Record, page 142, Cross Int. 1 to 3,) that he has piloted for 10 or 12 years, and never sank any boat whatever there.

Stackpole says (Record, page 155, Int. 5,) he has been a pilot 8 or 10 years, has passed through this bridge some 500 times, (page 156, Int. 8,) never did any material damage.

Moore has passed through the bridge 300 times, (Record, page 150, Cross Int. 1,) never did any damage but once, when he knocked off some 30 feet of the guard of the steamer City of Pekin. (Int. 8.)

Hunter, (Record, p. 154, Cross Int. 1,) says, "I have passed through this bridge from 20 to 100 times a year ever since it was built, never had any accident there, except that I was on the steamer LaSalle going down, at one time, and the steamer Lacen was going up, and we collided in the bridge." (Int. 8, page 152.)

Thomas, (Record, page 133, Int. 5,) says he never met with but one accident at the bridge, and then he sunk a barge; he has passed through the bridge twice a week, every year since it was built. (Rec., page. 134, Cross Int. 1.)

All of these men testify that the sinking of a boat there, is ***within the perils of river navigation***; in other words, ***an unavoidable accident;***

or to express it more clearly, an accident which could not be avoided by the exercise of ordinary care, caution and skill.

Yet with one exce ion, they none of them, though they are all old river pilots, ever sunk a boat there or met with any material injury.

It will readily be seen that it is to the interest of these men to bring such losses within the term "Perils of River Navigation," for if so held by the Court, it is a grand hiding place for them, for all of their acts of negligence and want of care and skill; they all testify that the location is a dangerous one, but their testimony is proof conclusive, that an accident there, is the exception and *not* "inevitable."

But the Appellee has also introduced the testimony of several first-class Illinois river pilots who state that such accidents *can* be avoided, and that when they occur they are the result of negligence.

John L. Dowler, states (Record, page 95), he has been pilot on Illinois River 11 years; he says (Int. 5 and Cross Int. 10), that the pilot can calculate with certainty the effect the current will have on his boat; that he has passed through this bridge 25 times every season, since the bridge was built, and in Cross Int. 1 to 7, he states fully what should be done in order to avoid losses and accidents; in answer to Cross Int. 11 he states that he came down through this bridge safely, two or three days after the Farragut sunk the Ajax, and the current was equally strong.

Francis M. Davis, (Record, page 114, Int. 5,) says, experienced pilots know the draft of the current, at the bridges; that it is part of their profession—they all dread the wind more than the current; (Int. 3,) he says he never had much trouble at this bridge; he says (Cross Int 9,) that he always takes into consideration the current and wind before passing through the bridge, and can calculate nearly to a certainty.

Ephraim Morrision (Record, page 38,) has been engaged towing boats on the Illinois River since 1854; (2d Int.) he says that he should consider that this collision and loss arose wholly from negligence.

All of these pilots testify to the difficulties attending navigation at this bridge, and speak of it as dangerous; but they all testify that by care and caution, and following a certain course, which is to keep well under the west bank of the river, the passage can be made safely.

We would submit then, that by Appellee's own witnesses it is proved conclusively, that this loss was not an "inevitable accident;" Ebaugh knew that the bridge was there, knew that the cross current existed, knew how to avoid its effects—did not take the precautions that his experience had taught him, were required, violated the law in reference

to "Look Outs," and then hides behind *this* plea; had he ran upon a well known sunken rock or sand bar, would he claim that *that* was "inevitable?"

The following cases are directly in point in this regard:

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|---|---|
| Alexander *vs.* Green, | 7 *Hill*, 533. |
| Wells *vs.* Steam Navigation Co., | 4 *Seldon*, 375. |
| Ashmore *vs.* Penn. Steam Trans. Co., | 4 *Dutcher* 180. |
| Steamer New Philadelphia. | 1 *Black*, 62. |

Fretz et al vs Bull et al 12 Howard 467

In the case in the 4th Seldon, the Steamer ran her tow against a wharf.

In the case in the 7th, Hill, the steamer ran her tow upon a sunken rock, as well known to the pilot of the steamer, as this bridge and current were known to Captain Ebaugh.

In the case in the 4th, Dutcher, the steamer ran her tow on a well known sand bar.

In all of these cases, the Court held that there was gross negligence, and the steamers were responsible for it.

But the case in the 1st, Black, we would respectfully submit is directly in point, and we cannot see how any distinction can be drawn between that case and this one. The facts relied upon in that case, were as stated in the opinion, that there was a strong tide running which swung the steamer and her tow around against a vessel, lying at the dock; the Court held (page 76) that the steamer was negligent in not leaving sufficient room, and in not making sufficient allowance for the strength of the tide, and therby preventing the collision.

In the published case of Robson *vs.* Steamer Northern Belle, U. S. District Court, Wisconsin, (Hon. Judge Miller,) the steamer ran her tow on a well-known sand-bar in the Mississippi River, which was a great obstruction to navigation; the plea of "inevitable accident" was made, and proof adduced to show great care, caution and skill on the part of Respondent; and it was fully shown that the current and wind drove them on to the bar. The Court held that the Captain and Pilot were well acquainted with the bar and the channel, (which was 150 or 200 feet wide,) and had never met with an accident there—they knew that the wind was blowing fresh, and might be stronger at this point; "*they knew the bar, the cause of the wind and the low stage of the water.*" *The accident was not unavoidable.*" Mr. Justice Davis subsequently affirmed the degree against the Respondent.

We would submit respectfully, that the facts in this case and the case

at bar are almost identical, while the case at bar is much stronger, because a clear violation of the law is also shown.

We claim that it was not the force of the current that sunk the Ajax, it was the weight of the steamer Farragut carried against the bridge by the current, crushing the Ajax. The Quicksteps, 9th Wallace 670

It was suggested on the trial in the Court below, that this bridge is a nuisance and an obstruction to navigation, and that Appellants should have brought their suit against the bridge.

That the bridge is not an obstruction to navigation is shown in the fact that in the seven years that had passed since it was built, only from seven to ten serious losses had occurred there; Captain Ebaugh, in a very general way, says that he knows of six boats that were sunk there in the spring of 1866, but mentions names &c. of only three; but Mr. Dunn, who had charge of the bridge at the time, says (see Record, page 19, Int. 34 and 35,) that in the case mentioned by Ebaugh of an ice boat, it sunk on the wreck of the Ajax; and in the other two cases the fault was clearly that of the pilots.

Davis who had piloted on the river ten years, only testifies to four losses, one of which was sunk on the Ajax, (Record, page 114, Int. 8,) and another which was sunk by the pilot Hardin Coulter, who, he says is in no way a skillful pilot, being very excitable. (Record, page 116, Cross Int. 12 and 13.)

Dowler testifies that 300 tows pass through every season.

Surely the fact that four, or even ten boats were sunk at the bridge, out of 2000 tows that passed through there in seven years, does not look as though such accidents were "inevitable."

As to the suggestion that our suit should have been brought against the bridge, we would submit that our chances for redress would be small under such proceeding, as it has been decided in the State Courts, in the U. S. Circuit Courts, and in this Honorable Court that such bridges are not obstructions to navigation, and not indictable as such.

Miss. & Mo. Railroad Co. *vs.* Ward, 2d *Black*, 486.

The draw through which the Farragut attempted to pass is 130 feet wide, (Nolte, Int. 9, Record, page 88,) giving ample room to pass through, under any and all circumstances.

It is shown in the evidence, that the Farragut is a powerful steamer, that her engines were capable to have backed her up against this cur-

[illegible] of a violation of the laws regulating navi-

rent, even when she was down almost into the draw, or that her pilot might have passed through the east draw on this occasion.

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|---|---|---|---|
| Ebaugh, Record, | Marginal p p. | | 183 and 192. |
| Dowler, Record, | p p. 98, 99, | Cross Int, | 6, 11 & 33. |
| Dunn, " | p. 17, 23, | Int. | 28, 45. |
| ~~Morton~~, " | p. 89, | Int. | 12. |

Meeteer

All the witnesses for Appellee have testified as to the capacity and skill of Captain Ebaugh, as a pilot.

We would submit, that the greater his skill, the more unpardonable his negligence; but his skill or capacity have nothing, whatever, to do with the questions at issue.

Nelson *vs.* Leland, 22 *Howard*, 55.
Jolly *vs.* Terre Haute Bridge Co., 6 *McLean*, 246.

Considerable evidence has been taken by Appellee, as to what Clark said after the collision; Clark denies most of what it is alleged he said, but we will submit that these conversations took place while all was excitement, while a number of persons were standing round a stove in the cabin next day; and how much of what is alleged, Clark did say; or how much of it was said for him by others, no one can tell; (see Clark Testy. Record, page 68, Cross Int. 18,) but whatever he may have said cannot alter the question of negligence. Chief Justice Taney, in the case of Haney *vs.* Balt. Packet Co., 23 Howard, 308, comments upon such conversations, and says they cannot be allowed any weight in a case.

The two principal witnesses, in regard to these conversations, are Ebaugh and Nolte, both of whom are owners of the steamer and personally liable for the damages.

The Appellee next attacks the Canal Boat and endeavors to prove that she was rotten and worthless; this is a well understood game, in all of such cases; they first destroy her and then swear that she was worthless.

The evidence shows that she was inspected, the summer before the loss, at Chicago, and rated A, 2; there being only one grade better, A, 1; the Inspector, as will be seen by his testimony, (Record, page 35,) made a very careful and minute examination; those who built her, (see Goulette & Pauliot Testy. Record, p. p. 42 and 45),say she was strong, and well built about three years before the collision. Mathews testifies to the fact that she was staunch and strong; (Record, page 46), the Inspector and all of these witnesses think she was worth from $2500 to

[illegible] of a violation of the laws regulating navi-

$3000; but we would submit that no evidence is necessary to prove that she was staunch and strong, further than the fact that she was loaded in the fall, lay all winter in the ice, and in the spring the cargo was found to be sound and in good order. (Clark, Testy. Record, Marginal page, 203) Another fact showing her strength, is the damage done to the bridge, where she struck; the resistance was so great that it knocked Clark down and another man was thrown over-board and drowned. Dunn, in his statement (Record, page 17, Int. 30, 31, 43,) as to what damage the bridge sustained, shows clearly her staunchness and seaworthyness. They make the point, also, that the piling had been braced and stiffened, yet the Canal boat was strong enough to demolish it.

Upon an examination of the evidence of the witnesses, Meeteer and Lollis, produced by Respondent to depreciate the value of the Ajax, it will be seen that they did not, and could not (the Ajax being under water,) make such an examination as would permit of their making a just estimate of her value.

Lollis, Record, p p. 77 and 78.
Meeteer, Record, p p. 93, Cross Int. 25 to 48.

Lollis says, in answer to Cross Int. 3, Record, page 78, that the hole in her side was 6 feet long, and perhaps longer, by about ten feet wide.

Meeteer says, (see Record, page 93, Cross Int. 25,) that the hole was about one foot wide and twenty inches long.

We would submit that these two gentlemen differ somewhat materially in their statements on this point; they evidently saw this hole through very different spectacles.

"It is no defence to a suit for damages caused by a collision that no loss would have been sustained if the injured vessel had been stronger."

1 Par. Mar. Law, page 211.
Olcott Admiralty, 444.
Steamer New Philadelphia, 1 *Black*, 70.

The point made by Appellee of an usage or custom existing on the Illinois River, that canal boats are towed at their own risk, which we do not admit, that they have proved, (except that it exists only in the minds of steam boat men, when they are called upon to pay damages for their negligence,) even if such usage and custom did exist, would be no defence against negligence or a violation of the laws regulating navi-

gation. In the following cases there were written contracts to the effect, that the tows were taken at their own risk :

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| Steamer New Philadelphia, | 1st *Black*, 62. |
| Wells *vs.* Steam Navigation Co., | 4 *Dutcher*, 180. |
| Alexander *vs.* Green, | 7 *Hill*, 533. |

The question of towage at ~~our~~ risk is fully discussed in the case, in the 4th Dutcher.

The value of the Canal boat is testified to by Chapman, the Marine Inspector, at $2500 ; (Record, page 36,) by Charles Clark, $3000 ; (Record, page 34,) by Pauliotte and Goulette, her builders, from $2500 to $3000 ; (Record, p p. 43 to 47), by Michael Dempsey, $2500 to $2700 ; (Record, page 41,) all the experts testify that in the spring of 1866, on account of the high price of labor and materials, it would have cost to build her, nearly double what it did at the time she was built.

In cases of such losses, the law allows freight on the cargo.

Williamson *vs.* Barrett; 13 *Howard*, 111.
1 Par. Mar. Law, 204.

The freight consisted of 3400 bushels of wheat and 1400 bushels of oats, at a freight of eight cents for the wheat and five cents for the oats, making a total of $342 less expenses of trip, which Clark estimates at about $92, leaving a net freight of $250 ; which with $500 for clothing, furniture and household effects, makes Clark's total loss $3750.

We claim that we have fully shown by the evidence, that the collision and loss were attributable to the fact that there was recklessness and negligence in not having a "Special Look Out" as required by law.

The Appellee claims that the want of a "Look Out" had nothing to do with the loss.

We claim that we, having made a *prima-facie* case of fault against the Appellee, it devolves upon it to show by largely preponderating evidence that its position is correct ; and we demand that it does so, not

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The Appellee claims that the want of a "Look Out" had nothing to do with the loss.

We claim that we, having made a *prima-facie* case of fault against the Appellee, it devolves upon it to show by largely preponderating evidence that its position is correct ; and we demand that it does so, not by a general averment, *but by reference to particular interrogatories and answers*, upon which it relies to sustain its position.

We would here state, that the entire evidence, as produced in the Courts below, was in writing ; that some of it was badly written and difficult to decipher, and that it was very voluminous ; and in the writ[illegible] of Mr. Justice Davis, he says: "I regret [illegible] to the

*pressure of other engagements,) that I have not had time to examine the evidence at length, in order to show the correctness of the conclusions which I have reached in this case.*"

We would respectfully submit that an examination of the evidence will fully sustain all of our positions, and the averments that we have made.

We have shown in two ways, that the want of a "Look Out" tended to the collision. First, Ebaugh and his son are the *only* witnesses who testify that the collision occurred as shown in position 6, on diagram "B. B." they were both shut up in the wheel-house. Nolte an one-eighth owner of the steamer and liable to that extent, and Neimann, the mate, both say that the collision was at the end of the piling; this is also sworn to by Dunn, Clark, Smith and King, witnesses for the Appellant, and the injury done to the bridge fully proves it; this fact alone shows that their elevated position and shut up in the wheel-house as they were, prevented their knowing exactly where they were; and had a "Look Out" been kept, the pilot could have been notified of his exact position.

Second—Captain Clark stood on the deck of the canal boat, he saw that a collision was imminent, and ran up on the deck of the steamer for a fender, but when he got back to the stern of the boat it was too late. Neimann also testifies that he saw a collision was imminent and told the pilot so; but he (the pilot,) made no reply, and evidently did not hear him; while Capt. Ebaugh testifies that he had no idea that a collision would occur until the moment they struck. The three bridge-tenders testify that they saw that she was going to strike when she was a considerable distance from the bridge. Now we would submit that these two facts prove conclusively that the want of the "Look Out," properly placed, was the cause of the loss, and the correctness of the dictum of this Court, in the numerous cases, that the wheel-house and hurricane deck are not the proper place for a "Look Out," (if on this occasion there had been such in that place,) is proved conclusively in this case.

Now how does the Appellee meet this? Does it offer in any way to rebut it? If so, we call upon the Appellee to point it out in the evidence; we have been unable to find it; Capt. Ebaugh to exonerate himself from liability for this violation of the law, merely attempts to prove that he followed a certain course, (as laid down on diagram B. B.,) a course which he and all other river pilots are obliged to take every time they make the passage of the bridge, in order to do so safely; he and his son, Charles Henry, (who were shut up in the wheel-house,) are the only witnesses that testify to the correctness of this diagram, for

there were none other of his witnesses on deck, until just a few seconds before the collision, while Clark, Dunn, King and Smith all testify that not one of the positions on the diagram are correct; finally Ebaugh himself admits that he is only certain of the positions as far as the wreck of the Martha; and Morton swears that Ebaugh told him immediately after the loss that he had done what he had never attempted to do before; that is run through the bridge with a full head of steam on.

But admitting that he did follow the course, and back, stop and slow the steamer, as he says he did. we would submit that it is not sufficient to show that he did only *that* which he was always obliged to do, to make the safe passage of the bridge, but he must show in addition, that he not only took *extraordinary* precautions to avoid the collision, but he must also show to the satisfaction of the Court that such precautions were taken as entirely superseded the necessity of a "Look Out," on the occasion, as required by the law; therefore we claim that this averment constitutes no defence. But the evidence of our five witnesses, denying the correctness of the diagram and the averment as to stopping, backing and slowing, certainly should not be set aside for the unsupported statement of this father and son, who were in a position shut up in the wheel-house, where they could not correctly estimate positions, and one of whom is liable for one half of the damages caused by this collision; and we would respectfully ask the Court whether *this* evidence of care and caution, adduced by the Appellee is sufficient to cover up and excuse its negligence in its wholesale violation of the law?

The degree of vigilance that the law requires, will depend upon the circumstances of each individual case, and is generally measured by the consequences of the negligence so far as it inflicts serious injuries on others, and also with the command of means to avoid injuring others, possessed by the person on whom the obligation is imposed; they rely on the plea of "inevitable accident," stating how dangerous this locality is; yet, on this occasion they ignored this fact entirely, and did not adopt the means to prevent, what they say is "inevitable," that is, have a vigilant "Look Out;" we would submit that the plea is strong ground against the Appellee. In this case we were helpless—nothing that we could have done would have saved us this loss; being in such condition, and considering the dangers of the navigation at this point—well known to the Capt. of the Farragut, the degree of vigilance required, was great. Are we then remediless in the premises? Must the Appellant lose all that he has in the world, without any fault or negligence on his part, when so great negligence has been shown by the Appellee? Surely justice would hold the Appellee to [illegible]

66 (Objected to as before.)

A. I saw these, or articles very similar to them, at the rooms of Southworth & Hawes, I think, in 1847.

Int. 15. What is your opinion as to those being the same ones you saw?

(Objected to as before, and that the opinion of witness is called for.)

A. I think they are the same.

Int. 16. What are those exhibits, and what were they used for?

(Objected to as to 5th int. of Coburn's deposition.)

A. They are parts of a camera used for making several heads on one plate.

Int. 17. Do you know of any particular instance when the instrument of which these exhibits were part was used? and, if so, state what they were

(Objected to as last before.)

A. They were used for making pictures of some school-girls which I recollect particularly, and there were one or two single heads which were made nearly at the same time.

Int. 18. How frequently did you see it used?

(Objected to same as before.)

A. It was often used, to my knowledge; occasionally used, but not uniformly.

Int. 19. Is there any circumstance which enables you to recollect that pictures were taken with this machine last shown you, of which Exhibits B 1 to B 5 are parts, in the year 1847?

(Objected to as last before.)

A. I think we made pictures with it in 1847, for the Mechanic Charitable Association fair held at that time.

Int. 20. And on what date was that fair held?

(Objected to as last before.)

A. It was in the autumn of 1847.

*Cross-examination by R. M. Townsend, esq., counsel for respondent.*

Cross. 1. Will you swear positively what year it was that the Mechanic Charitable Association fair was held in Boston, to which you have referred in your testimony?

67 A. Yes; it was in 1847.

Cross. 2. What makes you positive?

A. I was assisting in getting pictures ready for exhibition. In 1848 I was in Vermont at that period of the year.

Cross. 3. You assisted in getting pictures ready at other times, and for different purposes and persons, did you not?

A. The preparations for getting pictures ready for the fair is different; I did assist in getting pictures ready at other times and for different purposes.

Cross. 4. Have you anything but what you have now stated to fix the time referred to in the two last questions and answers?

A. I don't think of anything now.

Cross. 5. Were you examined in the suit of Simon Wing vs. C. F. Richardson, in the United States court in equity, in Massachusetts, for the plaintiff therein?

A. I was.

Cross. 6. Did you not, on your then cross-examination, answer to cross-interrogatory No. 3, put to you as to the time you first saw Exhibits B 1 to B 5, as marked in this case, answer as follows to it: "There are no

That these pilots and river men are reckless and criminally careless in the navigation of the river, is shown in the fact (see Record, page 23, Dunn Test'y , Cross Int. 50,) that they have frequently run into the lower end of the piling, when coming up the river against the current; they surely cannot claim that in such instances the current was the cause, when they had a channel of 130 feet through the draw of of the bridge.

The attempt to hide behind the plea of "inevitable accident" and "perils of river navigation," if sustained in this Court, is dangerous; for it opens a wide gate for negligence and recklessness. But we would submit that the evidence is conclusive that the plea is absurd. Here was a bridge, a stationary object that had stood in the same position for years, and the navigation of the river at that point was well understood by all the pilots, and none of those produced as witnesses, by Appellee, with one exception, ever sank a boat there; such a plea, if good in this case, would be made in every case of its nature; any stationary object, such as a sunken rock or a sand bar impeding free navigation, would come within the term; and no matter how great the violation of the law, it would only be necessary to show that such impediment existed, in order to relieve of all liability for damages arising under any and all negligence, as well as all violations of the laws and rules regulating navigation.

And now we would respectfully ask, what do the facts in this case, as shown by the evidence, present for the decision of this Honorable Court?

Are the numerous decisions of this Court, in relation to the question of "Special Look Outs," to be regarded as mere empty words?

Is the decision in the 18th Howard, page 467, "*that an efficient watch in navigating our Western Rivers is indispensable; and the fact that there was no watch to direct or advise the pilot, he being left to his own judgment, unaided by suggestions or facts from any quarter, is enough to charge the steamer with fault,*" to be set aside in this particular case, and virtually held not to apply to it?

Are the numerous decisions "*that in dangerous localities, or in places where danger is to be apprehended, extra vigilance must be used,*" to be over-ridden and ignored, where if ever such law applied, it would be in the case at bar?

Shall this Captain station himself upon the hurrica[illegible] in the wheel-house, and by *his* testimony set aside the [illegible] other witnesses, and claim, also, that the numerous decisions of this

Honorable Court, to the effect that in such position it is impossible to judge correctly of positions, distances, objects, &c., do not apply to this case?

We would respectfully submit that we bring this appeal upon principle, and we make this the square issue in our appeal; are these decisions subject to qualification, and to what extent? If they are, on what are we to rely? What becomes of these salutary laws, so necessary to the safety of the maritime commercial world? For what were they ever enacted, if not to secure the lives, property and interests of others, from the recklessness, negligence and mismanagement which distinguish this case? Are they to be left to the judgment of reckless men, to obey them or not at their pleasure? The affirmance of this degree, we submit, would be a dangerous precedent—unsettling the laws and rules of navigation as laid down in every previous decision of the Admiralty Courts of this country and of England, reaching to all waters within Admiralty jurisdiction, and rendering uncertain the law on these points, of which heretofore there has never been any question or doubt.

All of which is respectfully submitted.

LAWRENCE PROUDFOOT,

*Proctor for Appellants.*

# Supreme Court of the United States.

DECEMBER TERM, 1869.

CHARLES CLARK AND THE BUCKEYE MUTUAL INS. Co., *appellants*,
*v.*
THE STEAMER ADMIRAL FARRAGUT, *appellee*.

BRIEF FOR APPELLEE.

This was a proceeding in admiralty to subject the steamer Admiral Farragut to the payment of damages for the loss of the canal-boat Ajax, occasioned by the colliding of said canal-boat, while being towed down the Illinois river by the Farragut, against the piling of the Mendosia railroad bridge. So much of the libel as is material to be now considered alleges that at the time of the collision the Ajax was "tight, staunch, strong, and seaworthy in every respect," and that its owner entered into a contract with the master of the Farragut to tow the canal-boat, with the cargo, safely from the port of Beardstown, on the Illinois river, to the port of St. Louis, and return; that in attempting to pass through the bridge at Mendosia the steamer was so carelessly and negligently managed that she caused the said canal-boat to come in contact with the pier of the bridge, whereby she and her cargo became a total loss; that the loss occurred "wholly from the negligence, recklessness, and incapacity of those having the steamer in charge, and had they observed the ordinary caution and diligence necessary in the navigation of said river at said point, said accident and loss would not have occurred."

The answer of the respondents, owners of the Farragut, denies that the Ajax was "tight, staunch, strong, and seaworthy in every respect," and alleges that "while her external appearance did not indicate her really unsound condition, the side timbers and clamps of said canal-boat were decayed and unsound; her stern was unsound and rotten; and said canal-boat, from age and decay, was an unseaworthy, unsafe, and almost worthless boat; denies any contract to tow the canal-boat Ajax with her cargo from the port of Beardstown to the port of St. Louis and return, but alleges the facts to be, that the master of the Farragut verbally agreed simply to tow the Ajax to St. Louis; that said contract and agreement was made with reference and subject to a general well-established and well-known usage on the Illinois and Mississippi rivers; that contracts for towing, in the absence of special agreements, are contracts to tow safely, except the usual dangers and hazards of river navigation, and denies that said steamer and her owners incurred by such undertaking the liabilities of a common carrier; denies that the steamer was carelessly and negligently managed; that the loss of the Ajax is attributable to the unskilfulness, incompetency, negligence, or fault of any of those having charge of the steamer; but alleges it to have been fairly and entirely attributable to the usual dangers of river navigation; that the railroad bridge at Mendosia is placed at a point where the Illinois river, having run in a southeasterly direction, changes its course, and runs in a southwesterly direction; that when the water is high, which was the case when the accident happened, there is a strong current running southeasterly, and diagonally across the passage way of one hundred and fifteen feet, left open for boats, through said bridge; that the height of water on the 8th of March, 1866, when the collision occurred, was at a point where said diagonal current is the strongest; that at any stage of water the stern

of a boat going down the river, because simply of the turn in the river, swings round toward the east pier of said bridge, which is protected by piles extending out into the river, and the difficulty of keeping a boat going down the stream from striking the east pier, or the piles that protect it, is increased in proportion as the river rises, and the diagonal current is increased in strength; that when the Farragut approached the bridge with the Ajax in tow, Charles S. Ebaugh, then master of said steamer, who had been licensed as a pilot for twelve successive years previously, and then having such license, and who is one of the most skilful, experienced, and careful pilots on the Illinois river, took the wheel, and was steering the steamer at the time of the accident; that as the steamer neared the bridge she was carefully managed, but by the strength of the diagonal current she was forced towards the piles protecting the east pier, when the canal-boat, being on the larboard side, came in contact with the piles, which had been recently stiffened, and her unsound and rotten timbers were crushed and the boat lost, but not from any incompetency, negligence, or fault of those having charge of the steamer, and that said loss was within the exception of the usual dangers of river navigation.

The testimony substantially sustains the answer. That Captain Ebaugh, who was steering the steamer at the time of the accident, was a skilful, experienced, and careful pilot, a "number-one" pilot, sober and prudent, is proven by the uncontroverted testimony of a dozen old river men and pilots of long standing. Printed Record, side paging, 351, 362, 382, 393, 403, 416, 424, 434, 446, 457, 157, 168, 214.

That there was, on the 8th of March, 1866, when the accident happened, a diagonal current running across and along the west bank of the Illinois river, with a velocity variously estimated at two to two-and-a-half miles

an hour, whose tendency is to drive vessels and boats in the direction of the piling under the bridge, and that in the navigation of said river at said bridge accident and loss will certainly result, unless care and diligence are used, and the precaution taken to hug the west bank of the river in order to have the necessary leeway to pass through the bridge, without being swung against said bridge by the current, is admitted. Printed Record, 104.

That a well-known and established usage prevails on the Illinois river that contracts for towing, in the absence of special agreements, are only contracts to tow safely, the usual dangers and hazards of river navigation excepted, is established by the concurring testimony of eleven witnesses and denied by none. Printed Record, side paging, 116, 173, 317, 330, 351, 381, 392, 429, 440, 451, 462.

That the contract in this case was simply verbal to tow the boat to St. Louis, is proven by Captain Ebaugh and John R. Dutch. Record, side paging, 164, 343.

There is some conflict in the testimony as to how the steamer was handled; but numerous witnesses testify that she was properly managed. Captain Ebaugh's testimony, printed Record, side paging, 166, 167, 168, 169, 170, 171, 172.

Bolejack, the engineer, corroborates Captain Ebaugh's statement. Record, 234, 235, 236.

C. F. Neiman, the mate, swears that the steamer took the proper course and went into the bridge in proper shape. Record, side paging, 155, 156, 157, 158, 159, 160. See, also, deposition of Charles H. Ebaugh, commencing printed Record, 211, and of J. Purdam, at 374.

Clark, the libellant, admitted to different witnesses that "when the boat was about the length of her above the bridge, that she was in good shape as he ever saw a boat to go through." (Printed Record, 280.) "That it was an unavoidable accident." Record, 411, 243.

The correctness of the diagram B B is proved by C. S. Ebaugh, Wills, C. H. Ebaugh, Meeteer, and Nolte. Printed Record, side paging, 169, 304, 211, 262, 245.

The evidence shows that the striking of the piling when passing through the bridge is often unavoidable; that boats frequently strike, and that several have been lost in consequence. Printed Record, side paging, 174, 216, 264, 284, 362, 310, 327, 359, 380.

Pilots cannot always calculate the effect of the cross-current. Record, 358.

James B. Thomas, a pilot on the Illinois river for twenty years, swears that "a steamboat is liable at any time to strike the draw pier and do more or less damage, * * * It is no matter how skilful the navigator may be, he cannot avoid it." Record, 391.

John L. Leach and other pilots testify to the same effect. Record, 401.

Numerous witnesses testify that the loss of the canal-boat, in the manner and under the circumstances proven in this case, is within the ordinary dangers and hazards of river navigation.X

Under all the circumstances of the case, considering the facts admitted and proven by both parties, and the conflict in the testimony as to other facts, the district court found that the respondents were not in fault, and dismissed the libel. From this decision an appeal was taken to the circuit court, where the facts were again examined and the decree of the district court affirmed. Here is the concurring opinion of two courts on the same facts, that the loss of the canal-boat was an accident attributable to the perils of the navigation of the river at the particular point, and not to any fault of the respondents; and now the case is brought here to get the opinion of a third court on the same state of facts. In reference to such cases this court has said: "In cases of collison the testimony is often conflicting and irreconcilable. Each party can make out a plausible case, supported by some evidence.

X The Admiral Farragut was not a common carrier and was not liable for accidents, short of gross negligence. Edwards on Bailments, 408, 409; Story on Bailments, § 496 2 Conn. 204; 4 McLean 379

In such cases we have frequently decided, that where the district and circuits concur in opinion on the facts, and there is testimony supporting their decision, we will not reverse it on doubts raised by the ingenuity of counsel."

The Hypodame, 6 Wallace, 223.

Newell *v.* Norton, 3 Wallace, 267.

The appellants, while admitting "that where the facts have been passed upon, with the same result, by both the district and circuit courts, they will not be inquired into here," insist that "in all of the reported cases, without exception, where it has been shown that there was no 'lookout,' the decrees have been against the parties so violating the law." It is submitted that the reported cases referred to are all of them cases where the injury sustained arose from the want of a proper lookout to point out to the pilot, in time to have him avoid it, an object which he did not see, and have no application to a permanent and well-known obstruction in plain view of the pilot or man at the wheel, and which he was seeking to avoid. As well might it be contended, if the Ajax had been blown up by a sunken torpedo, or destroyed by a waterspout, that the owners of the Farragut were responsible if it could be shown that, at the time, the steamer was without a proper "lookout," as that her owners are liable in this case for not having a "lookout" to tell the pilot of the Farragut where the Mendosia bridge was.

Nieman, the mate of the Farragut, swears that "the steamer went into the bridge in proper shape. At the time of the collision the canal-boat was properly attached to the steamer, as before described;" that he "did not see any lack of care or skill on the part of any of the officers or crew of the steamer;" that "at the time of the collision he was standing forward of the pilot-house, on the larboard side, on the hurricane roof of the steamer that the canal-boat was lashed to;" that he "was on watch at the time." Printed Record, 156, 157.

This witness further testifies that the "Farragut went

in the usual course, and everything appeared to be going right until we got between the pier and piling of the bridge. The bows of the boat were about in the bridge. At that time the stern of the boat flanked around and struck the piles in the middle of the river upon which the bridge swings. The occasion of this flanking of the boat was, to my knowledge, the high water." Printed Record, 155.

All the cases referred to in the brief of appellants to show the Farragut in fault in not having a "special lookout" in front and on her lower deck when she approached and entered between the piers of the bridge, relate to collisions with objects about which it would have been at least possible for the "lookout" in that position to have seen and known more than the pilot. A lookout is ordinarily stationed on the forward deck, because it is supposed from that position he can best see objects ahead; but his proper position is undoubtedly in that part of the vessel where he can most effectively discharge the duty with which he is charged. Where that is, must be determined by the facts of the particular case, depending on the character and rig of the vessel, the navigation in which she is engaged, and the hazard she is likely to encounter. A lookout on the forward deck could have been of no possible use in this case. The facts show that the careful and skilful pilot in charge knew exactly where the piers of the bridge were; that he had the Farragut in proper position; that he so steered her as to enter properly between them; and that it would have been impossible, after the lookout saw that the Ajax was going to strike, to have avoided it. Neiman and Nulte were both on watch, and saw the moment the steamer commenced flanking toward the piling, and informed the pilot, but it was then impossible to avoid collision. What more could a special lookout on the forward deck have done?

In the case of James Gray *v.* Owners of the Fraser, 21 How., 193, this court says: "A lookout on board the

John Fraser would be of little or no value, for the view ahead was obstructed by the steam-tug."

If a "lookout" was necessary in this case, the testimony shows that one of the very best was stationed in the very best position to perform that duty. Nolte testifies that he was employed on the Farragut; that he is familiar with the Illinois river; that he has acted as steersman, engineer, mate, clerk, and captain on different steamers; that shortly before the collision he went on board the Ajax, where he could have a better view, see if she would go through the bridge all right, and render any assistance if any was required; that he did that every time when the boat went through the bridge with a tow, and that he was not convinced the Ajax would strike till about the time she did strike; that there was no lack of skill or care on the part of the officers of the steamer Farragut; that "the officers of the boat were all on duty and in their proper places." Printed Record, side paging, 247, 249, 251, 254.

John Cain, a hand on board the steamer, was out forward, on larboard side of steamer, just before canal-boat struck, and looked over and saw there was a "fair distance to get clear." Printed Record, side paging, 85.

A careful examination of the evidence will show that the loss of the Ajax arose from the ordinary hazard of river navigation, which, according to the well-established usage on the Illinois river, was at the risk of her owner, and not from any fault on the part of the steamer having her in tow; but it is insisted that this court, under its repeated decisions, will not go into a critical examination of the facts further than to s e that there is evidence to warrant the conclusion arrived at by the two courts which have passed upon them.

LYMAN TRUMBULL,
*For Appellee.*

# U. S. Circuit Court Southern District of Illinois.

CHARLES CLARK *et al.*
*vs.*
THE STEAMER ADMIRAL FARRAGUT.

*In Admiralty, Southern District of Illinois.*

*Copy of Decision of Hon. David Davis.*

This case was argued at the last June term. Since the argument I have read the voluminous testimony and briefs, and examined the authorities referred to, and can find no reason to disturb the decree of the court below. The case turns on questions of fact, for the measure of responsibility attaching to steamers when towing other boats is well settled. On the 7th day of March, 1866, the canal-boat "Ajax," then lying at the port of Beardstown, with a full cargo, contracted with the steamer Admiral Farragut to tow her to St. Louis. The steamer took the boat in tow and proceeded safely on her voyage until about four o'clock in the morning of March 8, when, in attempting to pass through the draw of the railroad bridge at Mendosia, the canal-boat, which was lashed to her larboard side, struck the bridge, and both boat and cargo became a total loss. The libellants insist that this loss was occasioned by the negligence and incapacity of the officers of the steamer. On the contrary, these officers, denying all carelessness and mismanagement, claim that the accident was attributable to the dangers of river navigation It is undeniable that to boats descending the Illinois river the point where this drawbridge is placed is one of difficulty and danger. When the water is very high the danger is greatly increased, and steamboats, under the most careful management, are frequently unable to avoid a collision

with the bridge. At this point the river changes its course from a southeasterly to a southwesterly direction, and at a high stage of water there is a strong current which runs southeasterly and diagonally across the passage way left for boats through the bridge, and experienced pilots are often driven by the force of this current on to the bridge, notwithstanding the utmost care and circumspection. The evidence shows very clearly that there is no part of the river more hazardous to navigate, and that the bridge, as at present constructed, is a serious obstruction to the commerce of the river. Through the passage way of this bridge, on the night in question, when the diagonal current was the strongest, on account of the height of water, the Farragut undertook to tow the canal-boat, and the canal-boat was willing to be towed. The peculiar difficulties to be encountered were well known to river men, and it is fair to presume the master of the canal-boat, who was on board the steamer at the time, was not ignorant of them.

The first question that arises is, what is the measure of duty in such a case imposed on a steamer in the course of her employment; and on this point the law is well settled. The persons in charge of the steamer contracted that they had competent knowledge of their business, which they would apply faithfully and with reasonable diligence in towing the canal-boat to Saint Louis. They did not engage to insure the safety of the boat, nor to have extraordinary skill, nor to employ extraordinary diligence. Testing this case by this rule, I am unable to see that the accident in question is chargeable to the fault of the steamer. It is clear, from the weight of the evidence, that the steamer took the proper route after leaving her landing, was handled with competent skill, and would have passed safely through the bridge but for the force and power of the diagonal current, which the master had no means of controlling. It is proper to say that I place

no reliance on the testimony given by the men on the bridge, as to the course pursued by the steamer, after leaving Mendosia. The account which they give is opposed to the other evidence, and is also opposed to the probabilities of the case. The loss was, therefore, owing to the unavoidable dangers of navigation, and is not at all attributable to any lack of diligence or skill on the part of those who had charge of the steamer. It is said the Farragut is chargeable with the loss of the canal-boat, because she did not have at the time of the collision a special lookout detailed for the purpose. If the absence of a lookout contributed in the slightest degree to this accident, *this* would be true, but as the evidence shows the contrary, the steamer is not at fault, in the sense of the admiralty laws, for the consequences of this collision, because she did not have, as required by law, a trustworthy person specially detailed as a lookout. I regret (owing to the pressure of other engagements) that I have not had time to examine the evidence at length, in order to show the correctness of the conclusions which I have reached in this case. The decree of the district court dismissing the libel is affirmed.

D. DAVIS.
*Circuit Judge.*

UNITED STATES OF AMERICA, } ss.
*Southern District of Illinois.* }

I, J. A. Jones, clerk of the circuit court of the United States, in and for the southern district of Illinois, do hereby certify the foregoing to be a true and correct copy of the decision given by the Hon. David Davis, associate justice of the United States Supreme Court, in a certain cause wherein Charles Clark, the Buckeye Mutual Insurance Company, and the Home Insurance Company, of New York, are appellants, and the Steamer Admiral Farragut is appellee, as the cause appears of file in my said office.

In witness whereof I have hereunto set my hand and official seal at Springfield, in said district, this fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth year.

[SEAL.] J. A. JONES, *Clerk.*